GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of the Attorney General

ATTORNEY GENERAL
BRIAN L. SCHWALB

September 26, 2023

The Honorable Phil Mendelson, Chairman
Council of the District of Columbia
John A. Wilson Building
1350 Pennsylvania Avenue, NW, Suite 504
Washington, DC 20004

Dear Chairman Mendelson:

Enclosed for consideration and approval by the Council of the District of Columbia is proposed emergency legislation, the "Contract No. DCCB-2023-F-0039 with Cohen Milstein Sellers & Toll PLLC Approval and Payment Authorization Emergency Act of 2024" and accompanying emergency declaration resolution to approve the award of the proposed definitive multiyear Contract Number DCCB-2023-F-0039 to Cohen Milstein Sellers & Toll PLLC (Cohen Milstein).

This contract arranges outside legal counsel from Cohen Milstein to assist the Office of the Attorney General with the investigation of and potential litigation against identified targets in the housing industry for violations of antitrust laws. The contract is a definitive multi-year, contingency-fee contract with a not-to-exceed contract amount of $90 million. The base period of performance is from the date of award through five years thereafter. This contract will definitize a letter contract awarded on May 26, 2023.

If you have any questions, please contact Deputy Attorney General Candyce Phoenix at (202) 788-2066 or Candyce.Phoenix@dc.gov. I look forward to favorable consideration of this contract.

Sincerely,

Brian L. Schwalb
Attorney General

Enclosures

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of the Attorney General

Pursuant to section 202(c) of the Procurement Practices Reform Act of 2010, as amended, D.C. Official Code § 2-352.02(c), the following contract summary is provided:

COUNCIL CONTRACT SUMMARY

(Letter Contract)

(A)	**Contract Number:**	DCCB-2023-F-0039
	Proposed Contractor:	Cohen Milstein Sellers & Toll PLLC
	Contract Amount:	$90,000,000 Not-to-Exceed (5-Year) Total
	Unit and Method of Compensation:	Percentage of net recovery
	Term of Contract:	May 26, 2023 through five (5) years thereafter with two (2) two-year option periods
	Type of Contract:	Contingency Fee
	Source Selection Method:	Exempt from Competition

(B) For a contract containing option periods, the contract amount for the base period and for each option period. If the contract amount for one or more of the option periods differs from the amount for the base period, provide an explanation of the reason for the difference:

Base Period Amount:	**Not-to-Exceed $90,000,000.00**
Option Period 1 Amount:	**Not-to-Exceed $90,000,000.00**
Option Period 2 Amount:	**Not-to-Exceed $90,000,000.00**

*** There is a single contingency fee, if any, regardless of whether recovery occurs in the base period or the option periods, if exercised.**

(C) The date on which the letter contract or emergency contract was executed:

The letter contract was executed on May 26, 2023.

(D) The number of times the letter contract or emergency contract has been extended:

The letter contract has not been extended.

(E) The value of the goods and services provided to date under the letter contract or emergency contract, including under each extension of the letter contract or emergency contract:

No recovery has been obtained yet, therefore there is no obligation to the contractor.

(F) The goods or services to be provided, the methods of delivering goods or services, and any significant program changes reflected in the proposed contract:

The contractor will provide outside legal counsel to assist the Public Advocacy Division with the investigation and potential litigation against identified targets in the housing industry for violation of District of Columbia and federal antitrust laws

This contract represents the exercise of authority granted to the Attorney General to award contracts on a contingency fee basis by D.C. Law 19-168, § 3012, 59 DCR 8025, as added September. 20, 2012.

(G) The selection process, including the number of offerors, the evaluation criteria, and the evaluation results, including price, technical or quality, and past performance components:

Under D.C. Code §2-354.13(3), the procurement of legal services is exempt from the competitive procurement process. Cohen Milstein Sellers & Toll was selected considering its qualifications and demonstrated experience.

(H) A description of any bid protest related to the award of the contract, including whether the protest was resolved through litigation, withdrawal of the protest by the protestor, or voluntary corrective action by the District. Include the identity of the protestor, the grounds alleged in the protest, and any deficiencies identified by the District as a result of the protest:

No protest was filed.

(I) The background and qualifications of the proposed contractor, including its organization, financial stability, personnel, and performance on past or current government or private sector contracts with requirements similar to those of the proposed contract:

Cohen Milstein Sellers & Toll has over 45 years of experience. Some of the more recent cases it has successfully litigated include the Wells Fargo securities fraud case and the Sutter Health anti-trust case, where the Contractor was the recipient of the 2022 Outstanding Antitrust Litigation Achievement in Private Law Practice Antitrust Enforcement Award.

(J) A summary of the subcontracting plan required under section 2346 of the Small, Local, and Disadvantaged Business Enterprise Development and Assistance Act of 2005, as amended, D.C. Official Code § 2-218.01 *et seq*. ("Act"), including a certification that the subcontracting plan meets the minimum requirements of the Act and the dollar volume of the portion of the contract to be subcontracted, expressed both in total dollars and as a percentage of the total contract amount:

A subcontracting plan was not required for this competition-exempt procurement.

(K) Performance standards and the expected outcome of the proposed contract:

The contractor is required to perform legal services, advice, and consultation to OAG in a manner consistent with accepted standards of practice in the legal profession.

(L) The amount and date of any expenditure of funds by the District pursuant to the contract prior to its submission to the Council for approval:

No District funds have been expended or will be expended since this is a contingency fee contract – the contractor will be paid only from the proceeds of any recovery won by the contractor according to the contingency fee agreement.

(M) A certification that the proposed contract is within the appropriated budget authority for the agency for the fiscal year and is consistent with the financial plan and budget adopted in accordance with D.C. Official Code §§ 47-392.01 and 47-392.02:

The certification that the proposed contract is within the appropriated budget authority for the agency for the fiscal year(s) is not applicable since funding will come from the proceeds of any recovery won by the contractor according to the contingency fee agreement as authorized by D.C. Law 18-160, § 106a; as amended September 20, 2012 by D.C. Law 19-168, § 3012, 59 DCR 8025, Contingency fee contracts.

(N) A certification that the contract is legally sufficient, including whether the proposed contractor has any pending legal claims against the District:

Legal Sufficiency Memo is attached.

(O) A certification that Citywide Clean Hands database indicates that the proposed

contractor is current with its District taxes.

Citywide clean hands certificates dated September 1, 2023 indicates that O&G is current with District taxes.

(P) A certification from the proposed contractor that it is current with its federal taxes, or has worked out and is current with a payment schedule approved by the federal government:

The proposed contractor certified that it is current with its federal taxes.

(Q) The status of the proposed contractor as a certified local, small, or disadvantaged business enterprise as defined in the Small, Local, and Disadvantaged Business Enterprise Development and Assistance Act of 2005, as amended, D.C. Official Code § 2-218.01 *et seq.*:

The proposed contractor is not certified by DSLBD as a local business enterprise.

(R) Other aspects of the proposed contract that the Chief Procurement Officer considers significant:

None.

(S) A statement indicating whether the proposed contractor is currently debarred from providing services or goods to the District or federal government, the dates of the debarment, and the reasons for debarment:

The proposed contractor is not currently debarred from providing services or goods to the District or federal government.

(T) Any determination and findings issues relating to the contract's formation, including any determination and findings made under D.C. Official Code § 2-352.05 (privatization contracts):

There are no issues relating to the contract's formation.

(U) Where the contract, and any amendments or modifications, if executed, will be made available online:

The contract award, if executed, will be made available on the Office of Attorney General website, https://oag.dc.gov/notice-contract-awards-over-100000.

(V) Where the original solicitation, and any amendments or modifications, will be made available online:

Not applicable.

Government of the District of Columbia
Office of the Chief Financial Officer
Office of Tax and Revenue

1101 4th Street, SW
Washington, DC 20024

Date of Notice: September 1, 2023

Notice Number: L0010026861

COHEN MILSTEIN SELLERS AND TOLL
1100 NEW YORK AVE NW STE 500W
WASHINGTON DC 20005-3934

FEIN: **-***5235
Case ID: 1621802

CERTIFICATE OF CLEAN HANDS

As reported in the Clean Hands system, the above referenced individual/entity has no outstanding liability with the District of Columbia Office of Tax and Revenue or the Department of Employment Services. As of the date above, the individual/entity has complied with DC Code § 47-2862, therefore this Certificate of Clean Hands is issued.

TITLE 47. TAXATION, LICENSING, PERMITS, ASSESSMENTS, AND FEES
CHAPTER 28 GENERAL LICENSE
SUBCHAPTER II. CLEAN HANDS BEFORE RECEIVING A LICENSE OR PERMIT
D.C. CODE § 47-2862 (2006)
§ 47-2862 PROHIBITION AGAINST ISSUANCE OF LICENSE OR PERMIT

Authorized By Melinda Jenkins
Branch Chief, Collection and Enforcement Administration

To validate this certificate, please visit MyTax.DC.gov. On the MyTax DC homepage, click the "Validate a Certificate of Clean Hands" hyperlink under the Clean Hands section.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of the Attorney General

ATTORNEY GENERAL
BRIAN L. SCHWALB

Commercial Division

MEMORANDUM

TO: **Brian L. Schwalb**
Attorney General

FROM: **Robert Schildkraut** P.P.
Section Chief
Government Contracts Section

DATE: **September 21, 2023**

SUBJECT: **Approval of Contract Action for Outside Legal Counsel**
Contract Number: DCCB-2023-F-0039
Contractor: Cohen Milstein Stellers & Toll PLLC
Proposed Contract Amount: NTE $90,000,000 (5-Year Amount)

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1. Description of Proposed Contract

The Support Services Division ("SSD") of the Office of the Attorney General ("OAG") on behalf of the Public Advocacy Division ("PAD") issued letter contract DCCB-2023-F-0039 ("Contract") to Cohen Milstein Stellers & Toll PLLC ("Cohen Milstein" or "Contractor"). SSD now seeks approval of the definitized contract, merging with and incorporating the letter contract.

Under the Contract, Cohen Milstein is to provide outside legal counsel to assist PAD with the investigation and potential litigation against identified targets in the housing industry for violating Washington, D.C. and federal antitrust laws.

The Contract is a multi-year contingency fee-based contract, under which the Contractor will receive a percentage of any net recovery awarded to the District from the successful prosecution of cost recovery litigation or through settlement.

SSD executed a Letter Contract on May 26, 2023, with an initial term of 180 days (November 22, 2023), and amount of Not-To-Exceed ("NTE") of $999,000.00. SSD now seeks approval of the definitized Contract, executing the full five-year base period term from May 26, 2023,

through May 25, 2028, and the full Contract amount of NTE $90,000,000.00. The contract contains two additional option periods with two-year terms, each.

2. Procurement Process

This procurement was conducted in accordance with D.C. Code §2-354.13(3), which exempts the procurement of legal services from the competitive procurement process. On April 14, 2023, the Contracting Officer ("CO") issued a Notice of the District's Intent to Enter Into a Contract to the Contractor, with a request for standard compliance documentation. On April 28, the Contractor submitted the requested documents, including a Statement of Ethics, confirming no conflicts. After some negotiation on the letter contract terms, on May 26, the Attorney General ("AG") signed a D&F to Enter into a Contingency Fee Contract, and the CO executed the letter contract.

The CO found that Contractor demonstrated the professional and organizational capability to perform the required services, and determined that the Cohen Milstein is a responsible vendor through a D&F for Contractor Responsibility. Cohen Milstein does not appear on any federal or District excluded parties' listings. The agency fiscal officer certified that funds are available for this Contractor. This competition exempt procurement is not subject to subcontracting requirements. The award was not protested.

3. Legal Review

On June 9, 2023, you requested that this office review for legal sufficiency this proposed Contract. We have reviewed and approve this contract package, revised on June 27, 2023, for legal sufficiency.

In accordance with Section 202 of the Procurement Practices Reform Act of 2010, D.C. Law 18-371, D.C. Official Code § 2-352.02, effective April 8, 2011, the Mayor must submit to the Council for approval this proposed contract, which is over one million dollars.

If you have any questions, please contact Kirti Suri, Assistant Attorney General, at Kirti.Suri@dc.gov or 202-735-7602.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of the Attorney General

ATTORNEY GENERAL
BRIAN L. SCHWALB

Commercial Division

MEMORANDUM

TO: **Brian L. Schwalb**
Attorney General

FROM: **Robert Schildkraut**
Section Chief
Government Contracts Section

DATE: **September 21, 2023**

Subject: **Approval of Contract Action for Outside Legal Counsel**
Contract Number: DCCB-2023-F-0039
Contractor: Cohen Milstein Stellers & Toll PLLC
Proposed Contract Amount: NTE $90,000,000 (5-Year Amount)

This is to Certify that this Office has reviewed the above-referenced contract action and that we have found it to be legally sufficient.

If you have any questions in this regard, please do not hesitate to call me at (202) 724-4018.

P.P.

Robert Schildkraut

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of the Attorney General

ATTORNEY GENERAL
BRIAN L. SCHWALB

MEMORANDUM

TO: Gena Johnson
Contracting Officer

FROM: Natalie Mayers
Agency Fiscal Officer

DATE: June 7, 2023

SUBJECT: Funding Certificate
Proposed Contract – DCCB-2023-F-0039 with Cohen Milstein Sellers & Toll

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The certification that the proposed contract is within the appropriated budget authority for the agency is not applicable since funding will come from the proceeds of any recovery won by the contractor according to the contingency fee agreement as authorized by D.C. Law 18-160, §106a; as amended September 20, 2012 by D.C. Law 19-168, §3012, 59 DCR 8025, Contingency fee contracts. If you have any questions, please feel free to contact me at 724-5570.

CONTINGENCY FEE CONTRACT

1. Caption	Page of Pages	
Outside Legal Counsel for Housing Industry Matter	1	34

2. Contract Number	3. Effective Date	4. Requisition/Purchase Request/Project No.
DCCB-2023-F-0039	May 26, 2023	N/A

5. Issued by: Code	6. Administered by (If other than line 5)
Office of the Attorney General Support Services Division/Procurement Unit 400 6th Street, NW Washington, DC 20001	Office of the Attorney General Public Advocacy Division 400 6th Street, NW Washington, DC 20001

7. Name and Address of Contractor (No. street, city, state and zip code)	8. Delivery
Cohen Milstein Sellers & Toll PLLC 1100 New York Ave. NW, Fifth Floor Washington, DC 20005	☐ FOB Origin ☒ Other (See Schedule Section F)
	9. Discount for prompt payment
	10. Submit invoices to the Address shown in (3 copies unless otherwise specified) ☞ Section G.2

11. Ship to/Mark For	12. Payment will be made by:
Office of the Attorney General Public Advocacy Division 400 6th Street, NW Washington, DC 20001	The Office of Finance and Resource Management Office of the Controller/Agency Fiscal Officer 441 4th Street NW, Suite 890 North Washington, DC 20001
13. Accounting and Appropriation Data:	14. Reserved for future use

15A. Item	15B. Supplies/Services	15C. Qty.	15D. Unit	15E. Unit Price	15F. Amount
0001	Outside Legal Counsel in support of investigation and potential litigation as set forth in Section C.			See Section B	
				Total Estimated NOT-TO-EXCEED Amount of Contract ☞	**$90,000,000.00**

16. Table of Contents

(X)	Section	Description	Page	(X)	Section	Description	Page
PART I – THE SCHEDULE				**PART II – CONTRACT CLAUSES**			
X	A	Contract Form	1	X	I	Contract Clauses	27
X	B	Supplies or Services and Price/Cost	2	**PART III – LIST OF DOCUMENTS, EXHIBITS & ATTACHMENTS**			
X	C	Description/Specifications/Work Statement	6	X	J	List of Attachments	34
X	D	Packaging and Marking	9				
X	E	Inspection and Acceptance	9		K	Representations, Certifications and Other Statements of Offerors	
X	F	Deliveries or Performance	10				
X	G	Contract Administration data	11		L	Instructions, conditions & notices to offerors	
X	H	Special Contract Requirements	18		M	Evaluation factors for award	

Contracting Officer will complete Item 17 or 18 as applicable

17. ☒ CONTRACTOR'S NEGOTIATED AGREEMENT (Contractor is required to sign this document and return one (1) copy to issuing office.) Contractor agrees to furnish and deliver all items, perform all the services set forth or otherwise identified above and on any continuation sheets, for the consideration stated herein. The rights and obligations of the parties to this contract shall be subject to and governed by the following documents: (a) this award/contract, (b) the solicitation, if any, and (c) such provisions, representations, certifications, and specifications, as are attached or incorporated by reference herein.	18. ☐ AWARD (Contractor is not required to sign this document.) Your offer on Solicitation Number _____ including the additions or changes made by which additions or changes are set forth in full above, is hereby accepted as to the items listed above and on any continuation sheets. This award consummates the contract which consists of the following documents: (a) the Government's solicitation and your offer, and (b) this award/contract. No further contractual document is necessary.
19A. Name and Title of Signer (Type or print) Emmy L. Levens - Partner	20A. Name of Contracting Officer
19B. Contractor (Signature of person authorized to sign)	19C. Date Signed 9/20/23
	20B. District of Columbia (Signature of Contracting Officer)
	20C. Date Signed

SECTION B: CONTRACT TYPE, SUPPLIES OR SERVICES AND PRICE/COST

B.1 The Office of the Attorney General for the District of Columbia ("OAG" or "the District") engages Cohen Milstein Sellers & Toll PLLC ("Contractor") to assist the OAG Public Advocacy Division (PAD) with an investigation of and potential litigation against identified targets ("Identified Targets" at Attachment J.5) in the housing industry for violation of District of Columbia and federal antitrust laws ("the Matter").

B.2 This is the definitized contract (Contract) contemplated by the letter contract between the Contractor and OAG dated May 26, 2023 (Letter Contract). The Letter Contract is merged herewith and is superseded by this Contract.

B.3 In accordance with 27 DCMR 5025.3, OAG hereby awards a contingency fee contract with a cost-reimbursement component (Contract) to Contractor. Contractor shall represent OAG on a contingency fee basis and, if OAG realizes a monetary recovery, shall receive, in accordance with the terms of the Contract, a percentage of any Net Recovery and reimbursement of actual direct costs and expenses, as defined herein. **If no monetary recovery is realized, Contractor shall receive no compensation whatsoever from the District.** Payment to Contractor shall not exceed 50% of the Net Recovery realized by the District.

B.4 COMPENSATION

B.4.1 Prior to, as a pre-condition of, the calculation of any compensation owed to Contractor from the District, Contractor shall use its best efforts to seek its usual and customary allowable attorney fees and costs and expenses from the relevant Identified Targets.

B.4.2 CONTINGENCY FEE

B.4.2.1 Contractor shall only be entitled to compensation if the District realizes a monetary recovery, either through settlement, judgment or otherwise, in the Matter. For the purposes if the Contract, the District "realizes" or "obtains" a monetary payment only when such amount has been deposited in an appropriate District account.

B.4.2.2 The District agrees to pay Contractor a percentage of the net recovery amount (Net Recovery), as described in the Price Schedule at Section B.5, subject to the requirements of Paragraph B.4.4 (Contingency Fee).The Net Recovery shall be calculated by deducting Contractor's Reimbursable Costs, up to the Not-to-Exceed (NTE) amount identified in the Price Schedule at Section B.5, from the Gross Recovery, as defined in Paragraph B.4.2.3. For illustrative purposes, if the Gross Recovery is $50,000,000.00, and the Reimbursable Cost NTE amount is $5,000,000.00, the Net Recovery is $45,000,000.00.

B.4.2.3 The gross recovery amount (Gross Recovery) is the present value of any monetary recovery realized by the District for the Matter as a result of Contractor's representation

of the District whether by settlement, pursuant to court judgment following trial or appeal, or otherwise. Gross Recovery does not include attorney fees included in a settlement agreement or awarded to the District for OAG attorney and staff time. Gross Recovery may come from any source, including, but not limited to, Identified Targets and/or their insurance carriers and/or any third party, whether or not a party to such investigation or cause of action.

B.4.3 REIMBURSABLE COSTS

B.4.3.1 Reimbursable costs are actual direct costs, as further described in Section C.10 incurred by Contractor while performing services under this Contract (Reimbursable Costs). Contractor shall be responsible for all of its costs and expenses incurred throughout the investigation and litigation.

B.4.3.2 Contractor will only be entitled to recover Reimbursable Costs if the District obtains a monetary recovery and then only to the extent that Contractor does not recover such costs from the Identified Targets. To be clear, **for the purposes of calculating the District's liability for Reimbursable Costs only**, if Contractor is able to recover, $1,000,000.00 of its expenses from the Identified Targets and the Reimbursable Cost NTE amount is $5,000,000.00, the District will only pay Reimbursable Costs up to the NTE amount of $4,000,000.00. Reimbursable Costs received from the Identified Targets in no way changes the Reimbursable Costs NTE amount for the purpose of calculating Net Recovery.

B.4.3.3 In the event there is no monetary recovery, the District will not pay any Reimbursable Costs. The District understands and agrees, however, that if it incurs internal costs attributable to efforts of its own personnel in overseeing and aiding in the investigation and litigation, such as the District's own internal discovery-related costs, any such internal costs will not be reimbursed by Contractor to the District.

B.4.3.4 If Contractor is hired for multiple matters against multiple defendants under one contract, Contractor will only be entitled to fees, costs, and expenses for a matter against a defendant from which the District obtains a recovery (including costs of the matter fairly allocated to that defendant), and Contractor will not be entitled to fees, costs, or expenses solely allocated to any matter against a defendant where there is no recovery by the District.

B.4.4 ATTORNEY FEES

B.4.4.1 Contractor understands and agrees that it shall not be entitled to any separate payment for attorney fees. In the event that the District realizes a monetary recovery, even if Contractor is unable to recover its attorney fees from the Identified Targets, the only compensation from the District shall be the Contingency Fee and Reimbursable Costs, pursuant to Sections B.4.2 and B.4.3.

B.4.4.2 If Contractor recovers attorney fees from the Identified Targets, whether in full or in part, such fees shall be deducted from the Contingency Fee. For illustrative purposes only, if the Net Recovery is $50,000,000.00 (recovered after litigation is filed), the Contingency Fee (15%) is $7,500,000.00; and if Contractor sought $3,000,000.00 in attorney fees from the Identified Targets and the Court awarded $2,000,000.00, Contractor is entitled to a Contingency Fee of $5,500,000.00 ($7,500,000.00 - $2,000,000.00).

B.4.5 In no event will the District be required to compensate Contractor out of any fund other than monies recovered in the Matter.

B.5 PRICE SCHEDULE

B.5.1 BASE PERIOD – FIVE (5) YEARS

Contract Line Item No. (CLIN)	Services	Percentage of Net Recovery	Not to Exceed Amount *
0001	All Legal Services as described in Section C, Statement of Work, upon recovery by the District as outlined in 0001A, 0001B and 0001C below:		$80,000,000.00+
0001A	Contingency Fee if recovery obtained during the investigative phase of the Matter prior to filing a formal complaint	10%	
0001B	Contingency Fee if recovery obtained after the filing of a complaint but prior to the case proceeding to trial	15%	
0001C	Contingency Fee if recovery obtained once trial commences (i.e. when jury selection begins)	18%	
0002	Reimbursable Costs as described in G.3	NA	$10,000,000.00
	TOTAL NOT-TO-EXCEED CONTRACT AMOUNT		**$90,000.000.00**

*** The fees for the Base Period and each Option Period are not cumulative but represent a single NTE amount. If there are multiple Identified Targets, and money is recovered by different Identified Targets and at different times, the NTE amount in B.5 is the maximum cumulative amount to which the Contractor may be entitled for the entire contract, including option periods.**

+ In accordance with clause 15, Changes, of the Standard Contract Provisions, the CO may agree to raise the NTE amount if the CO determines that such increase is warranted; however, any such modification to the contract that exceeds $1M is subject to Council approval.

B.5.2 OPTION PERIOD ONE (1) (YEARS SIX AND SEVEN)

Contract Line Item No. (CLIN)	Services	Percentage of Net Recovery	Not to Exceed Amount *
1001	All Legal Services as described in Section C, Statement of Work, upon recovery by the District as outlined in 1001A, 1001B and 1001C below:		$80,000,000.00+
1001A	Contingency Fee if recovery obtained during the investigative phase of the Matter prior to filing a formal complaint	10%	
1001B	Contingency Fee if recovery obtained after the filing of a complaint but prior to the case proceeding to trial	15%	
1001C	Contingency Fee if recovery obtained once trial commences (i.e. when jury selection begins)	18%	
1002	Reimbursable Costs as described in G.3	NA	$10,000,000.00
	TOTAL NOT-TO-EXCEED CONTRACT AMOUNT		**$90,000.000.00**

*** The fees for the Base Period and each Option Period are not cumulative but represent a single NTE amount. Although money may be recovered by different Identified Targets and at different times, the NTE amount in B.5 is the maximum cumulative amount to which the Contractor may be entitled for the entire contract, including option periods.**

+ In accordance with clause 15, Changes, of the Standard Contract Provisions, the CO may agree to raise the NTE amount if the CO determines that such increase is warranted; however, any such modification to the contract that exceeds $1M is subject to Council approval.

B.5.3 OPTION PERIOD TWO (2) (YEARS EIGHT AND NINE)

Contract Line Item No. (CLIN)	Services	Percentage of Net Recovery	Not to Exceed Amount *
2001	All Legal Services as described in Section C, Statement of Work, upon recovery by the District as outlined in 2001A, 2001B and 2001C below:		$80,000,000.00+
2001A	Contingency Fee if recovery obtained during the investigative phase of the Matter prior to filing a formal complaint	10%	
2001B	Contingency Fee if recovery obtained after the filing of a complaint but prior to the case proceeding to trial	15%	
2001C	Contingency Fee if recovery obtained once trial commences (i.e. when jury selection begins)	18%	
2002	Reimbursable Costs as described in G.3	NA	$10,000,000.00
	TOTAL NOT-TO-EXCEED CONTRACT AMOUNT		**$90,000.000.00**

*** The fees for the Base Period and each Option Period are not cumulative but represent a single NTE amount. Although money may be recovered by different Identified Targets and at different times, the NTE amount in B.5 is the maximum cumulative amount to which the Contractor may be entitled for the entire contract, including option periods.**

+ In accordance with clause 15, Changes, of the Standard Contract Provisions, the CO may agree to raise the NTE amount if the CO determines that such increase is warranted; however, any such modification to the contract that exceeds $1M is subject to Council approval.

SECTION C: SPECIFICATIONS/STATEMENT OF WORK

C.1 SCOPE:

OAG engages Contractor to assist the PAD with investigation of and potential litigation in the Matter.

OAG will retain sole authority at all times to direct the investigation and litigation in all respects, including but not limited to, whether and when to initiate litigation, against whom actions will be taken, the claims to be brought in said litigation,

approval and/or rejection of settlements and the amount and type of damages to be requested.

C.1.1 APPLICABLE LAWS

The following laws are applicable to this procurement:

Item No.	Document Type	Title	Date
1	D.C. Code Ann.	Restraints of Trade D.C. Code § 28-4501, et seq.	Most recent
2	U.S. Code	Trusts, etc., in restraint of trade illegal; penalty 15 U.S.C. § 1, et seq	Most recent

C.2 RESERVED

C.3 BACKGROUND

OAG is retaining Contractor to assist with an investigation of the housing industry in the District of Columbia to determine whether certain actors are violating District and federal antitrust laws and with potential litigation against those actors.

C.4 REQUIREMENTS

C.4.1 Contractor shall perform legal services that include, but are not limited to the following:

C.4.1.1 Assist OAG with the investigation of potential violations of the law by the Identified Targets.

C.4.1.2 If violations of law are identified as a result of the investigation, assist in the litigation against the Identified Targets. Contractor shall assist in all phases of these investigations and litigations, including:

a. Preparation, filing, and service of all offensive and responsive pleadings;

b. Preparation and service of all offensive and defensive discovery;

c. Document review and management;

d. Coordinating litigation with other states and the federal government to promote, to the extent beneficial, a unified approach to litigation;

e. Taking depositions, defending depositions, preparing witnesses for depositions;

f. Identifying and managing experts needed to analyze, develop, or prove the District's case;

g. Participation and conduct of representation of the District in court hearings, oral arguments, trials, and settlement negotiations;

h. Coordination and conduct of any needed appeals.

C.4.1.3 **FOIA Assistance.** Third parties may submit FOIA requests to OAG or the District regarding this Matter. OAG will notify Contractor of the FOIA request and Contractor shall electronically provide to OAG, within the timeframe specified by the CA, all records responsive to the FOIA request. In addition, Contractor shall make all records regarding this Matter available for examination and review by OAG, upon request. Contractor shall be entitled to reimbursement of costs for searching and copying records as set forth in the Standard Contract Provisions Paragraph 34, Freedom of Information Act.

C.4.1.4 Provide regular status reports to the Contract Administrator.

C.4.1.5 Provide legal services to OAG for this litigation in a manner consistent with accepted standards of practice in the legal profession. The Attorney General for the Office of the Attorney General of the District of Columbia (the Attorney General) shall have final authority over all aspects of this litigation. The litigation may be commenced, conducted, settled, approved and ended only with the express written approval of the Attorney General.

C.4.1.6 Coordinate the provision of legal services with the Attorney General or his or her designated assistant, other personnel of OAG, and such others as the Attorney General may appoint. The Attorney General, at his or her sole discretion, has the right to appoint a designated assistant ("Government Attorney") to oversee the litigation, which appointment the Attorney General may modify at will.

C.4.1.7 Submit all substantive pleadings, motions, briefs, and other material which may be filed with a court to OAG in draft form in a reasonable and timely manner for review. All such material must be approved by the Attorney General or appointed designee prior to filing.

C.4.1.8 Communicate with the District's executive branch and agencies through OAG unless authorized by OAG to communicate directly with any of them.

C.4.1.9 Render services pursuant to this Contract as an independent contractor. Neither Contractor nor any employee of Contractor shall be regarded as employed by, or as an employee of, OAG.

C.5 Notice Requirements for Reimbursable Costs

Contractor shall provide notice to, and obtain approval from, OAG prior to incurring any individual Reimbursable Cost greater than $5,000. Notwithstanding the foregoing, Contractor shall provide notice to, and obtain written approval from OAG before engaging any expert witness or other consultants regardless of cost.

C.6 Key Personnel and Point of Contact

C.6.1 Key Personnel for this Contract are listed below:

Emmy Levens (elevens@cohenmilstein.com)
Robert Braun (rbraun@cohenmilstein.com)
Aaron Marks (amarks@cohenmilstein.com)
Cohen Milstein Sellers & Toll PLLC
1100 New York Ave. NW, Fifth Floor
Washington, DC 20005

C.6.2 Point of Contact

Contractor designates the following individual as the Point of Contact for all communication with OAG.

Emmy Levens (elevens@cohenmilstein.com)
Cohen Milstein Sellers & Toll PLLC
1100 New York Ave. NW, Fifth Floor
Washington, DC 20005

C.7 Diversion, Reassignment, and Replacement of Key Personnel or Point of Contact

The key personnel and point of contact specified in Section C.6 are considered to be essential to the work being performed hereunder. Prior to diverting any of the specified key personnel for any reason, Contractor shall notify the Contracting Officer at least thirty (30) calendar days in advance and shall submit justification, including proposed substitutions, in sufficient detail to permit evaluation of the impact upon the Contract. Contractor shall obtain prior written approval of the CO for any proposed substitution of key personnel.

SECTION D: PACKAGING AND MARKING

Not Applicable

SECTION E: INSPECTION AND ACCEPTANCE

E.1 The inspection and acceptance requirements for this Contract shall be governed by clause number six (6), Inspection of Services of the Government of the District of Columbia's Standard Contract Provisions for use with Supplies and Services Contracts, dated July 2010. (Attachment J.1)

SECTION F: PERIOD OF PERFORMANCE AND DELIVERABLES

F.1 TERM OF CONTRACT

The term of the Contract shall be for a base period of five (5) years from May 26, 2023. In the event that the Matter is fully resolved prior to the expiration of the Contract term, the Contract shall expire by its own terms. The Matter shall be considered "fully resolved" when final judgments and/or settlements are reached on all aspects of the Matter, any period for appeals has run, and the Contractor has been paid all amounts due under the Contract.

F.2 OPTION TO EXTEND THE TERM OF THE CONTRACT

F.2.1 The District may extend the Contract for up to two (2) additional two-year option periods, or successive fractions thereof, by written notice to the Contractor before the expiration of the Contract; provided that the District will give the Contractor preliminary written notice of its intent to extend at least ninety (90) days before the Contract expires. The preliminary notice does not commit the District to an extension. The Contractor may waive the ninety (90) day preliminary notice requirement by providing a written waiver to the Contracting Officer prior to expiration of the Contract.

F.2.2 If the District exercises an option, the extended Contract shall be considered to include this option provision. In no event shall any such extension of the Contract entitle the Contractor to additional fees.

F.2.3 The contingent fees for the option periods shall be as specified in the Section B of the Contract.

F.2.4 The total duration of this Contract, including the exercise of any options under this clause, shall not exceed nine (9) years.

F.3 DELIVERABLES

The Contractor shall perform the activities required to successfully complete the District's requirements and submit each deliverable, including but not limited to the deliverables in the table below, to the Contract Administrator (CA) identified in section G.9. The Point of Contact identified in Paragraph C.6.2 shall be responsible for submitting all deliverables.

SOW Section	Deliverable	Quantity	Format/Method of Delivery	Due Date
C.4.1.2 a.	Preparation, filing, and service of all offensive and responsive pleadings	TBD	PDF/Electronic	Ongoing, as requested
C.4.1.2 b.	Preparation and service of all offensive and defensive discovery	TBD	PDF/Electronic	Ongoing
C.4.1.2 e.	Depositions	TBD	PDF/Electronic	Ongoing
C.4.1.3	Records responsive to a FOIA request	TBD	PDF/Electronic	Within five (5) business days of request
C.4.1.4	Status Reports	TBD	PDF/Electronic	Ongoing
C.4.1.7	Drafts of substantive pleadings, motions, briefs, and other material which may be filed with the court	TBD	PDF/Electronic	Ongoing
C.5	Notice of reimbursable cost greater than $5,000 or Notice of intent to engage expert witness or other consultant	TBD	Electronic	Prior to incurring cost
C.6	Notification of diversion of key personnel or point of contact	TBD	Electronic	At least 30 days in advance

F.3.1 The Contractor shall submit to the District, as a deliverable, the report described in section H.5.5 that is required by the 51% District Residents New Hires Requirements and First Source Employment Agreement. If the Contractor does not submit the report as part of the deliverables, final payment to the Contractor shall not be paid pursuant to section G.4.2.

SECTION G: CONTRACT ADMINISTRATION

G.1.1 The Contractor shall assist in the investigation and litigation on a contingency fee basis. The District shall owe the Contractor a contingency fee and cost reimbursement, in accordance with the terms of the Contract, only if the District realizes a monetary recovery. If the District realizes a monetary recovery, the Contractor shall receive a contingency fee and cost reimbursement in accordance with Section B.

G.1.2 Contractor understands and agrees that if the District does not realize a monetary recovery, the Contractor shall receive no compensation or cost reimbursement whatsoever from the District.

G.2 PAYMENT PROCESS

G.2.1 In the event the District obtains a monetary recovery whether by judgment, settlement, or any other means, all such funds shall be deposited into the appropriate District of Columbia account.

G.2.2 The District will make payment to the Contractor, into a designated Attorney IOLTA account established prior to any request for payment, after the District's receipt of any monetary recovery from the Contractor's representation of the District in the Matter. If no monetary recovery is realized, the Contractor shall receive no compensation or reimbursement for any costs incurred.

G.2.3 The District will pay the Contractor on or before the 15th day after receiving a proper payment request from the Contractor following the occurrence of the factors outlined in paragraph G.2.1.

G.2.4 The Contractor shall submit a proper payment request as specified below. The payment request shall be submitted to the agency Chief Financial Officer with concurrent copies to the Contract Administrator. The address of the CFO is:

Office of Finance & Resource Management
Office of the Controller/Agency CFO
441 4th Street NW, Suite 890 North
Washington, DC 20001 (202) 727-0333

G.2.5 To constitute a proper payment request, the Contractor shall submit the following information on the payment request:

a) Contractor's name, federal tax ID and payment request date (date payment request as of the date of mailing or transmittal);

b) Contract number and payment request number;

c) Description, price, quantity and the date(s) that the supplies or services were delivered or performed;

d) Other supporting documentation or information, as required by the Contracting Officer;

e) For cost reimbursement, the Contractor must submit an itemized list and description of all costs to be reimbursed and provide receipts to support the cost expenditures upon request;

f) Bank and Account number of IOLTA account to which payment is to be deposited;

g) Name, title, phone number and mailing address of person (if different from the person identified in C.6.2) to be notified in the event of a defective payment request;

h) A certification that the Contractor is entitled to payment in the requested amount; and

i) Authorized signature.

G.2.6 If OAG and Contractor disagree about the amount of the fee and/or costs owed to the Contractor, the disagreement shall be resolved according to the procedures stated in I.4

Disputes. The parties shall place any disputed amount in escrow pending the resolution of any disagreement relating to the amount of the Contractor's fee and costs and shall distribute all undisputed portions of the total monetary recovery in accordance with paragraph G.2.3.

G.3 REIMBURSABLE COSTS

G.3.1 Contractor shall only be entitled to Reimbursable Costs to the extent that Contractor is not able to recover its costs and expenses in accordance with Paragraph B.4.3. Reimbursable Costs shall not exceed the Reimbursable Costs NTE amount described in the Price Schedule at B.5 (for the purposes of this Section G.3, the NTE is also referred to as "cost reimbursement ceiling").

G.3.2 Contractor agrees that Reimbursable Costs shall only include: (i) court fees and costs, (ii) fees and expenses of consulting and testifying experts and their staff, (iii) deposition costs, including court reporters, videographers, and transcription costs, (iv) trial costs, including trial preparation expenses and costs, jury consultants, and exhibit/graphics expenses; (v) document hosting and storage, document review platforms, or litigation management applications charges specific to the Matter; (vi) reasonable travel expenses; (vii) costs associated with special master or alternative dispute resolution services; (vii) actual out of pocket costs associated with computerized research – Lexis/Westlaw; (ix) charges for outside vendor document reproduction which, because of volume or format, is impractical to complete in-house; (x) fees for service of process; and (xi) any costs for which Contractor obtains prior written approval. The costs incurred for lodging, meals, and incidental expenses shall be considered to be reasonable and allowable only to the extent that they do not exceed on a daily basis the maximum per diem rates in effect at the time of travel as set forth in the Federal Travel Regulations, prescribed by the General Services Administration. The Contractor shall not incur any such cost, for which it may seek reimbursement, that exceeds $5,000 without the Contract Administrator's (CA) prior written approval. Costs exceeding $5,000 that did not receive the CA's prior written approval, shall not be included in the calculation of Reimbursable Costs.

G.3.3 Contractor agrees to use its best efforts to perform the work specified in this Contract and to meet all obligations under this Contract within the cost reimbursement ceiling.

G.3.4 Contractor must notify the Contracting Officer (CO), in writing, whenever it has reason to believe that the total amount for Reimbursable Costs will be greater than the cost reimbursement ceiling.

G.3.5 As part of the notification, Contractor must provide the CO a revised estimate of the total cost of performing this Contract.

G.3.6 Contractor shall not be entitled to any costs in excess of the Reimbursement Cost NTE amount, whether such costs were incurred during the course of contract performance

or as a result of termination. The CO may raise the NTE amount if the CO determines that such costs are necessary for successful investigation and/or litigation of the Matter, and such determination will not be unreasonably withheld. The CO will notify Contractor in writing that the estimated cost has been increased and provide a revised cost reimbursement ceiling for performing this Contract.

G.3.7 Only the Contracting Officer has the authority to change the cost reimbursement ceiling. If any cost reimbursement ceiling specified in Section B.5 is increased, any costs Contractor incurs before the increase that are in excess of the previous cost reimbursement ceiling shall be allowable to the same extent as if incurred afterward, unless the CO issues a termination or other notice directing that the increase is solely to cover termination or other specified expenses.

G.3.8 Contractor must maintain a system, using Generally Accepted Accounting Practices, to track expenses that, at minimum, can provide an itemized list of expenses.

G.4 FIRST SOURCE AGREEMENT REQUEST FOR FINAL PAYMENT

G.4.1 For contracts subject to the 51% District Residents New Hires Requirements and First Source Employment Agreement requirements, final request for payment must be accompanied by the report or a waiver of compliance discussed in section H.5.5.

G.4.2 No final payment shall be made to the Contractor until the agency CFO has received the Contracting Officer's final determination or approval of waiver of compliance with 51% District Residents New Hires Requirements and First Source Employment Agreement requirements.

G.5 RESERVED

G.6 THE QUICK PAYMENT ACT [February 2019]

Delete Article 30, The Quick Payment Act, of the Standard Contract Provisions dated July 2010 for use with District of Columbia Government Supplies and Services Contracts and substitute the following) in its place:

G.6.1 Interest Penalties to Contractors

G.6.1.1 The District will pay interest penalties on amounts due to the Contractor under the Quick Payment Act, D.C. Official Code § 2-221.01 *et seq*., as amended, for the period beginning on the day after the required payment date and ending on the date on which payment of the amount is made. Interest shall be calculated at the rate of at least 1% per month. No interest penalty shall be paid if payment for the completed delivery of the item of property or service is made on or before the required payment date. The required payment date shall be:

G.6.1.1.1 The date on which payment is due under the terms of this Contract;

G.6.1.1.2 Not later than 7 calendar days, excluding legal holidays, after the date of delivery of meat or meat food products;

G.6.1.1.3 Not later than 10 calendar days, excluding legal holidays, after the date of delivery of a perishable agricultural commodity; or

G.6.1.1.4 30 calendar days, excluding legal holidays, after receipt of a proper invoice for the amount of the payment due.

G.6.1.2 No interest penalty shall be due to the Contractor if payment for the completed delivery of goods or services is made on or before:

G.6.1.2.1 3rd day after the required payment date for meat or a meat product;

G.6.1.2.2 5th day after the required payment date for an agricultural commodity; or

G.6.1.2.3 15th day after any other required payment date.

G.6.1.3 Any amount of an interest penalty which remains unpaid at the end of any 30-day period shall be added to the principal amount of the debt and thereafter interest penalties shall accrue on the added amount.

G.6.2 Payments to Subcontractors

G.6.2.1 Pursuant to the requirements of Section I.4, the Contractor may not subcontract without the prior written consent of the CO. If the Contractor subcontracts, the Contractor shall take one of the following actions within seven (7) days of receipt of any amount paid to the Contractor by the District for work performed by any subcontractor under the Contract:

G.6.2.1.1 Pay the subcontractor(s) for the proportionate share of the total payment received from the District that is attributable to the subcontractor(s) for work performed under the Contract; or

G.6.2.1.2 Notify the CO and the subcontractor(s), in writing, of the Contractor's intention to withhold all or part of the subcontractor's payment and state the reason for the nonpayment.

G.6.2.2 The Contractor shall pay subcontractors or suppliers interest penalties on amounts due to the subcontractor or supplier beginning on the day after the payment is due and ending on the date on which the payment is made. Interest shall be calculated at the rate of at least 1% per month. No interest penalty shall be paid on the following if

payment for the completed delivery of the item of property or service is made on or before the:

G.6.2.2.1 3rd day after the required payment date for meat or a meat product;

G.6.2.2.2 5th day after the required payment date for an agricultural commodity; or

G.6.2.2.3 15th day after any other required payment date.

G.6.2.3 Any amount of an interest penalty which remains unpaid by the Contractor at the end of any 30-day period shall be added to the principal amount of the debt to the subcontractor and thereafter interest penalties shall accrue on the added amount.

G.6.2.4 A dispute between the Contractor and subcontractor relating to the amounts or entitlement of a subcontractor to a payment or a late payment interest penalty under the Quick Payment Act does not constitute a dispute to which the District is a party. The District may not be interpleaded in any judicial or administrative proceeding involving such a dispute.

G.6.3 Subcontract requirements

G.6.3.1 The Contractor shall include in each subcontract under this Contract a provision requiring the subcontractor to include in its contract with any lower-tier subcontractor or supplier the payment and interest clauses required under paragraphs (1) and (2) of D.C. Official Code § 2-221.02(d).

G.6.3.2 The Contractor shall include in each subcontract under this Contract a provision that obligates the Contractor, at the election of the subcontractor, to participate in negotiation or mediation as an alternative to administrative or judicial resolution of a dispute between them.

G.7 CONTRACTING OFFICER (CO)

Contracts will be entered into and signed on behalf of the District only by contracting officers. The contact information for the Contracting Officer is:

Gena Johnson
Contracting Officer
Office of the Attorney General
Support Services Division/Procurement Unit
400 6th Street, NW
Washington, DC 20001
Email: gena.johnson@dc.gov
Phone: 202-247-6448

G.8 AUTHORIZED CHANGES BY THE CONTRACTING OFFICER

G.8.1 The Contracting Officer (CO) is the only person authorized to approve changes in any of the requirements of this Contract.

G.8.2 The Contractor shall not comply with any order, directive or request that changes or modifies the requirements of this Contract, unless issued in writing and signed by the CO.

G.8.3 In the event the Contractor effects any change at the instruction or request of any person other than the CO, the change will be considered to have been made without authority and no adjustment will be made in the Contract price to cover any cost increase incurred as a result thereof.

G.9 CONTRACT ADMINISTRATOR (CA)

G.9.1 The Contract Administrator is responsible for general administration of the Contract and advising the CO as to the Contractor's compliance or noncompliance with the Contract**.** The CA has the responsibility of ensuring the work conforms to the requirements of the Contract and such other responsibilities and authorities as may be specified in the Contract. These include:

G.9.1.1 Keeping the CO fully informed of any technical or contractual difficulties encountered during the performance period and advising the CO of any potential problem areas under the Contract;

G.9.1.2 Coordinating site entry for Contractor personnel, if applicable;

G.9.1.3 Reviewing invoices for completed work and recommending approval by the CO if the Contractor's costs are consistent with the negotiated amounts and progress is satisfactory and commensurate with the rate of expenditure;

G.9.1.4 Reviewing and approving invoices for deliverables to ensure receipt of goods and services. This includes the timely processing of invoices and vouchers in accordance with the District's payment provisions; and

G.9.1.5 Maintaining a file that includes all contract correspondence, modifications, records of inspections (site, data, equipment) and invoice or vouchers.

G.9.2 The name, address and telephone number of the Contract Administrator is:

Adam Gitlin (adam.gitlin@dc.gov)
Chief, Antitrust and Nonprofit Enforcement Section
Public Advocacy Division
Office of the Attorney General for the District of Columbia
400 6th Street NW

Washington, D.C. 20001
Tel.: 202-442-9864

G.9.3 The CA shall NOT have the authority to:

1. Award, agree to, or sign any contract, delivery order or task order. Only the CO shall make contractual agreements, commitments or modifications;
2. Grant deviations from or waive any of the terms and conditions of the Contract;
3. Increase the dollar limit of the Contract or authorize work beyond the dollar limit of the Contract;
4. Authorize the expenditure of funds by the Contractor, except pursuant to Section C.6;
5. Change the period of performance; or
6. Authorize the use of District property, except as specified under the Contract.

G.9.4 The Contractor will be fully responsible for any changes not authorized in advance, in writing, by the CO; may be denied compensation or other relief for any additional work performed that is not so authorized; and may also be required, at no additional cost to the District, to take all corrective action necessitated by reason of the unauthorized changes.

SECTION H: SPECIAL CONTRACT REQUIREMENTS

H.1 HIRING OF DISTRICT RESIDENTS AS APPRENTICES AND TRAINEES

H.1.1 For all new employment resulting from this Contract or subcontracts hereto, as defined in Mayor's Order 83-265 and implementing instructions, the Contractor shall use its best efforts to comply with the following basic goal and objectives for utilization of bona fide residents of the District of Columbia in each project's labor force:

At least fifty-one (51) percent of apprentices and trainees employed shall be residents of the District of Columbia registered in programs approved by the District of Columbia Apprenticeship Council.

H.1.2 The Contractor shall negotiate an Employment Agreement with the Department of Employment Services ("DOES") for jobs created as a result of this Contract. The DOES shall be the Contractor's first source of referral for qualified apprentices and trainees in the implementation of employment goals contained in this clause.

H.2 RESERVED

H.3 PREGNANT WORKERS FAIRNESS

H.3.1 The Contractor shall comply with the Protecting Pregnant Workers Fairness Act of 2016, D.C. Official Code § 32-1231.01 *et seq*. (PPWF Act).

H.3.2 The Contractor shall not:

a) Refuse to make reasonable accommodations to the known limitations related to pregnancy, childbirth, related medical conditions, or breastfeeding for an employee, unless the Contractor can demonstrate that the accommodation would impose an undue hardship;

b) Take an adverse action against an employee who requests or uses a reasonable accommodation in regard to the employee's conditions or privileges of employment, including failing to reinstate the employee when the need for reasonable accommodations ceases to the employee's original job or to an equivalent position with equivalent:

(1) Pay;
(2) Accumulated seniority and retirement;
(3) Benefits; and
(4) Other applicable service credits;

c) Deny employment opportunities to an employee, or a job applicant, if the denial is based on the need of the employer to make reasonable accommodations to the known limitations related to pregnancy, childbirth, related medical conditions, or breastfeeding;

d) Require an employee affected by pregnancy, childbirth, related medical conditions, or breastfeeding to accept an accommodation that the employee chooses not to accept if the employee does not have a known limitation related to pregnancy, childbirth, related medical conditions, or breastfeeding or the accommodation is not necessary for the employee to perform her duties;

e) Require an employee to take leave if a reasonable accommodation can be provided; or

f) Take adverse action against an employee who has been absent from work as a result of a pregnancy-related condition, including a pre-birth complication.

H.3.3 The Contractor shall post and maintain in a conspicuous place a notice of rights in both English and Spanish and provide written notice of an employee's right to a needed reasonable accommodation related to pregnancy, childbirth, related medical conditions, or breastfeeding pursuant to the PPWF Act to:

(a) New employees at the commencement of employment;

(b) Existing employees; and

(c) An employee who notifies the employer of her pregnancy, or other condition covered by the PPWF Act, within 10 days of the notification.

H.3.4 The Contractor shall provide an accurate written translation of the notice of rights to any non-English or non-Spanish speaking employee.

H.3.5 Violations of the PPWF Act shall be subject to civil penalties as described in the Act.

H.4 UNEMPLOYED ANTI-DISCRIMINATION

H.4.1 The Contractor shall comply with the Unemployed Anti-Discrimination Act of 2012, D.C. Official Code § 32-1361 *et seq*.

H.4.2 The Contractor shall not:

(a) Fail or refuse to consider for employment, or fail or refuse to hire, an individual as an employee because of the individual's status as unemployed; or

(b) Publish, in print, on the Internet, or in any other medium, an advertisement or announcement for any vacancy in a job for employment that includes:

(1) Any provision stating or indicating that an individual's status as unemployed disqualifies the individual for the job; or

(2) Any provision stating or indicating that an employment agency will not consider or hire an individual for employment based on that individual's status as unemployed.

H.4.3 Violations of the Unemployed Anti-Discrimination Act shall be subject to civil penalties as described in the Act.

H.5 51% DISTRICT RESIDENTS NEW HIRES REQUIREMENTS AND FIRST SOURCE EMPLOYMENT AGREEMENT (February 2012)

H.5.1 For contracts for services in the amount of $300,000 or more, the Contractor shall comply with the First Source Employment Agreement Act of 1984, as amended, D.C. Official Code § 2-219.01 et seq. (First Source Act).

H.5.2 The Contractor shall enter into and maintain during the term of the Contract, a First Source Employment Agreement (Employment Agreement) with the District of Columbia Department of Employment Service's (DOES), in which the Contractor shall agree that:

(a) The first source for finding employees to fill all jobs created in order to perform the Contract shall be the First Source Register; and

(b) The first source for finding employees to fill any vacancy occurring in all jobs covered by the Employment Agreement shall be the First Source Register.

H.5.3 The Contractor shall not begin performance of the Contract until its Employment Agreement has been accepted by DOES. Once approved, the Employment Agreement shall not be amended except with the approval of DOES.

H.5.4 The Contractor agrees that at least 51% of the new employees hired to perform the Contract shall be District residents.

H.5.5 The Contractor's hiring and reporting requirements under the First Source Act and any rules promulgated thereunder shall continue for the term of the Contract.

H.5.6 The CO may impose penalties, including monetary fines of 5% of the total amount of the direct and indirect labor costs of the Contract, for a willful breach of the Employment Agreement, failure to submit the required hiring compliance reports, or deliberate submission of falsified data.

H.5.7 If the Contractor does not receive a good faith waiver, the CO may also impose an additional penalty equal to 1/8 of 1% of the total amount of the direct and indirect labor costs of the Contract for each percentage by which the Contractor fails to meet its hiring requirements.

H.5.8 Any contractor which violates, more than once within a 10-year timeframe, the hiring or reporting requirements of the First Source Act shall be referred for debarment for not more than five (5) years.

H.5.9 The Contractor may appeal any decision of the CO pursuant to this clause to the District of Columbia Contract Appeals Board as provided in the Disputes clause in this Contract.

H.5.10 The provisions of the First Source Act do not apply to nonprofit organizations that employ 50 employees or less.

H.6 SUBCONTRACTING REQUIREMENTS

H.6.1 The Contractor agrees to make the maximum level of effort to engage SBE/CBE businesses consistent with efficient contract performance and the spirit of the District's Small and Certified Business Enterprise Development and Assistance Act, D.C. Official Code § 2-218.01 et seq.

H.6.2 Pursuant to the requirements of Section I.4, the Contractor may not subcontract without the prior written consent of the CO. If the Contractor subcontracts goods and services, the Contractor shall develop a subcontracting plan specifically utilizing small business enterprises (SBEs) certified by the District of Columbia Department of Small and Local Business Development (DSLBD), and/or local certified business enterprises (CBEs). Such services could include, but are not limited to, legal services, as well as document review, copying, litigation support, graphic production, document review, document hosting.

H.6.2.1 The subcontracting plan shall:

A. Identify the specific SBE/CBE business and/or businesses, outline the good and/or services to be provided by each SBE/CBE business, and identify the stage of investigation/litigation when the services will be provided (where possible); and
B. An estimated value of the subcontract(s), where possible, including fixed rates.

H.6.3 Each SBE/CBE that has a subcontract with the Contractor shall perform at least 35% of its contracting effort with its own organization and resources.

H.6.4 The Contractor shall submit a quarterly report, to the CO, that includes the following information for each subcontract identified in the subcontracting plan:

A. The price that the prime contractor will pay each subcontractor under the subcontract;
B. A description of the goods procured or the services subcontracted for; and
C. The amount paid by the prime contractor under the subcontract.

H.7 FAIR CRIMINAL RECORD SCREENING

H.7.1 The Contractor shall comply with the provisions of the Fair Criminal Record Screening Amendment Act of 2014, effective December 17, 2014 (D.C. Law 20-152) (the "Act" as used in this section). This section applies to any employment, including employment on a temporary or contractual basis, where the physical location of the employment is in whole or substantial part within the District of Columbia.

H.7.2 Prior to making a conditional offer of employment, the Contractor shall not require an applicant for employment, or a person who has requested consideration for employment by the Contractor, to reveal or disclose an arrest or criminal accusation that is not then pending or did not result in a criminal conviction.

H.7.3 After making a conditional offer of employment, the Contractor may require an applicant to disclose or reveal a criminal conviction.

H.7.4 The Contractor may only withdraw a conditional offer of employment, or take adverse action against an applicant, for a legitimate business reason as described in the Act.

H.7.5 This section and the provisions of the Act shall not apply:

(a) Where a federal or District law or regulation requires the consideration of an applicant's criminal history for the purposes of employment;

(b) To a position designated by the employer as part of a federal or District government program or obligation that is designed to encourage the employment of those with criminal histories;

(c) To any facility or employer that provides programs, services, or direct care to, children, youth, or vulnerable adults; or

(d) To employers that employ less than 11 employees.

H.7.6 A person claiming to be aggrieved by a violation of the Act may file an administrative complaint with the District of Columbia Office of Human Rights, and the Commission on Human Rights may impose monetary penalties against the Contractor.

H.8 RESERVED

H.9 AUDITS AND RECORDS

H.9.1 As used in this clause, "records" includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form.

H.9.2 Examination of Costs. If this is a cost-reimbursement, incentive, time-and-materials, labor-hour, or price redeterminable contract, or any combination of these, the Contractor shall maintain and the CO, or an authorized representative of the CO, shall have the right to examine and audit all records and other evidence sufficient to reflect properly all costs claimed to have been incurred or anticipated to be incurred directly or indirectly in performance of this Contract. This right of examination shall include inspection at all reasonable times of the Contractor's plants, or parts of them, engaged in performing the Contract.

H.9.3 Cost or pricing data. If the Contractor has been required to submit cost or pricing data in connection with any pricing action relating to this Contract, the CO, or an authorized representative of the CO, in order to evaluate the accuracy, completeness, and currency of the cost or pricing data, shall have the right to examine and audit all of the Contractor's records, including computations and projections, related to:

a) The proposal for the Contract, subcontract, or modification;
b) The discussions conducted on the proposal(s), including those related to negotiating;
c) Pricing of the Contract, subcontract, or modification; or
d) Performance of the Contract, subcontract or modification.

H.9.4 Comptroller General

H.9.4.1 The Comptroller General of the United States, or an authorized representative, shall have access to and the right to examine any of the Contractor's directly pertinent records involving transactions related to this Contract or a subcontract hereunder.

H.9.4.2 This paragraph may not be construed to require the Contractor or subcontractor to create or maintain any record that the Contractor or subcontractor does not maintain in the ordinary course of business or pursuant to a provision of law.

H.9.5 Reports. If the Contractor is required to furnish cost, funding, or performance reports, the CO or an authorized representative of the CO shall have the right to examine and audit the supporting records and materials, for the purpose of evaluating:

a) The effectiveness of the Contractor's policies and procedures to produce data compatible with the objectives of these reports; and
b) the data reported.

H.9.6 Availability. The Contractor shall make available at its office at all reasonable times the records, materials, and other evidence described in clauses H.9.1 through H.9.5, for examination, audit, or reproduction, until three (3) years after final payment under this Contract or for any shorter period specified in the solicitation, or for any longer period required by statute or by other clauses of this Contract. In addition:

a) If this Contract is completely or partially terminated, the Contractor shall make available the records relating to the work terminated until thee (3) years after any resulting final termination settlement; and

b) The Contractor shall make available records relating to appeals under the Disputes clause or to litigation or the settlement of claims arising under or relating to this Contract until such appeals, litigation, or claims are finally resolved.

H.9.7 The Contractor shall insert a clause containing all the terms of this section H.9, in all subcontracts under this Contract that exceed the small purchase threshold of $100,000, and:

a) That are cost-reimbursement, incentive, time-and-materials, labor-hour, or price-redeterminable type or any combination of these;
b) For which cost or pricing data are required; or
c) That require the subcontractor to furnish reports as discussed in H.9.5 of this clause.

H.10 OAG RIGHTS AND RESPONSIBILITIES

H.10.1 The Attorney General shall retain complete control over the course and conduct of the Matter and shall retain all decision-making authority over the matter, including but not limited to whether and when to initiate litigation, against whom actions will be taken, the claims to be brought in litigation, approval and rejection of all settlement offers, the scope and nature of any injunctive relief, and the amount and type of any restitution, damages and/or penalties to be sought.

H.10.2 The Attorney General may designate a Government Attorney and other staff members to oversee and assist Contractor with this investigation and litigation. The identity and responsibilities of such personnel so assigned shall be determined solely by the Attorney General or his designee.

H.10.3 A Government Attorney with supervisory authority for the case shall participate in all significant litigation matters and settlement conferences.

H.10.4 All substantive pleadings, motions, briefs, formal documents, and agreements must bear the signature of the Attorney General or his designee.

H.10.5 All settlement decisions shall be made exclusively at the discretion of the Attorney General or his designee.

H.10.6 The OAG will provide the Contractor with conference room space for meetings and/or depositions as needed in Washington, D.C. throughout this Contract.

H.11 RECORDS RETENTION

H.11.1 The Contractor shall maintain detailed, current billing records for all costs and expenses. The Contractor shall retain and make available all billing records related to the services provided under this Contract for a minimum of twelve (12) years from the expiration or termination of the Contract or the resolution of any appeal, whichever occurs later.

H.11.2 The Contractor shall preserve and make available to OAG all records related to the Matter for a minimum of twelve (12) years from the date of final settlement or until the litigation is completed, including the resolution of any appeal, whichever occurs later.

(a) If this Contract is completely or partially terminated, the Contractor shall make available the records relating to the work terminated for twelve (12) years after any resulting final termination settlement; and
(b) The Contractor shall make available records relating to appeals under the Disputes Clause or to litigation or the settlement of claims arising under or relating to this Contract until such appeals, litigation, or claims are finally resolved.

H.12 ETHICAL OBLIGATIONS AND LEGAL CONFLICTS OF INTEREST

H.12.1 An attorney-client relationship will exist between the District and any attorney who performs work under the Contract, as well as between the District and the firm of any attorney who performs work under the Contract. The D.C. Rules of Professional Conduct (RPC) and the ethical rules of any other jurisdiction in which work is performed are binding on the Contractor. The parties agree that the District may have a contractual cause of action based on violation of such rules, in addition to any other remedies available.

H.12.2 In addition to the prohibitions contained in the RPC and the ethical rules of any other jurisdiction in which work is performed, the Contractor agrees that it shall recognize

that in the performance of the Contract it may receive certain information submitted to the District government on a proprietary basis by third parties, information which relates to potential or actual claims against the District government, or information which relates to matters in dispute or litigation. Unless the District consents to a particular disclosure, the Contractor shall use such information exclusively in the performance of the Contract and shall forever hold inviolate and protect from disclosure all such information, except disclosures required by applicable law or court order. The Contractor also agrees that, to the extent it is permitted to disclose such information, it will make such disclosures only to those individuals who need to know such information in order to perform required tasks in their official capacity and will restrict access to such information to such individuals.

H.12.3 Before any contractor can be retained to perform legal services under the Contract, on behalf of the District government, the Attorney General for the District of Columbia must review and waive all actual or potential direct and indirect conflicts of interest pursuant to RPC 1.6, 1.7, 1.8, 1.9 and 1.10. Contractor shall provide the Attorney General with the following: (1) a written statement that there exists no Rule 1.7(a) direct conflict of interest regarding the work to be performed under the Contract; (2) a written description of all actual or potential conflicts of interest regarding the work to be performed under the Contract that require waiver pursuant to Rule 1.7(b) because the contractor represents another client in a matter adverse to any of the following: (i) the District government agency or instrumentality to be represented under the Contract; (ii) the District government as a whole; or (iii) any other agency or instrumentality of the District government (for this purpose, under D.C. Bar Legal Ethics Committee Opinion No. 268, a representation of a private client against a discrete government agency or instrumentality can have government-wide implications and thus constitute a representation adverse to the government as a whole pursuant to the RPC); and (3) a written description of all representations of clients who are or will be adverse to the District government with regard to the work to be performed under the Contract, whether or not such representations are related to the matter for which the work is to be performed under the Contract.

H.12.4 The Attorney General generally does not grant prospective conflict of interest waivers, except in certain *pro bono* matters. Thus, in addition to the prohibitions contained in the RPC and the ethical rules of any other jurisdiction in which work is performed under the Contract, without the consent of the Attorney General, the Contractor shall not represent any party other than the District in any disputes, negotiations, proceedings or litigation adverse to any agency or instrumentality of the District government or the District government as a whole, including, but not limited to, matters related to the work to be performed under the Contract. The Contractor shall notify the Attorney General immediately, in writing, of any potential conflicts of interest (as defined in the RPC) that arise during the period that the Contractor is performing work under the Contract. The Attorney General makes every attempt to be reasonable in deciding whether or not to consent to a conflict of interest and usually makes this decision promptly after receiving notice and sufficient information

regarding the conflict. If the Attorney General does not waive a conflict of interest, the Contractor shall undertake immediate action to eliminate the source of any such conflict of interest.

H.12.5 Before any contractor can be retained pursuant to the Contract, the Attorney General for the District of Columbia must review all actual, direct and potential conflicts of interest on behalf of the District government in light of D.C. Bar Rules of Professional Conduct ("RPC") 1.6, 1.7, 1.8, 1.9 and 1.10. Contractor shall provide the Attorney General with written notice of all actual or potential direct and indirect conflicts of interest in which the Contractor represents (or may represent) another client with interests adverse to the District government agency to be represented as well as against the District government as a whole. For this purpose, under D.C. Bar Legal Ethics Committee Opinion No. 268, (http://app.ocp.dc.gov/pdf/DCEB-2018-R-0001 ATTT2.pdf), a representation of a private client against a discrete government agency can have government-wide implications and thus qualify under the RPC as being against the government as a whole, including the individual agency that the private firm represents. In that situation, the private firm would be required to notify the Attorney General of the existence of a conflict under RPC 1.7 and obtain consent to such representation and waiver of the conflict. The Attorney General makes every attempt to be reasonable in deciding whether or not to consent to a conflict and usually makes this decision promptly after receiving notice of the conflict.

SECTION I: CONTRACT CLAUSES

I.1 APPLICABILITY OF STANDARD CONTRACT PROVISIONS

Except to the extent modified, supplemented or superseded by the Contract, the Standard Contract Provisions for Use with District of Columbia Government Supplies and Services Contracts dated July 2010 ("Standard Contract Provisions") apply to the Contract. The Standard Contract Provisions are available at http://ocp.dc.gov, under "Required Solicitation Documents."

I.2 INSURANCE (May 2023)

A. GENERAL REQUIREMENTS. The Contractor at its sole expense shall procure and maintain, during the entire period of performance under this contract, the types of insurance specified below. The Contractor shall submit a Certificate of Insurance to the Contracting Officer (CO) giving evidence of the required coverage prior to commencing performance under this contract. In no event shall any work be performed until the required Certificates of Insurance signed by an authorized representative of the insurer(s) have been provided to, and accepted by, the CO.

The Government of the District of Columbia shall be included in all policies, where applicable and allowable by law, required hereunder to be maintained by the Contractor and its subcontractors (except for workers' compensation and professional liability insurance) as an additional insureds for claims against The Government of the District of Columbia relating to this contract, with the understanding that any affirmative obligation imposed upon the insured Contractor or its subcontractors (including without limitation the liability to pay premiums) shall be the sole obligation of the Contractor or its subcontractors, and not the additional insured. The additional insured status under the Contractor's and its subcontractors' Commercial General Liability insurance policies shall be effected using the ISO Additional Insured Endorsement form CG 20 10 11 85 (or CG 20 10 07 04 **and** CG 20 37 07 04) or such other endorsement or combination of endorsements providing coverage at least as broad and approved by the CO in writing. All of the Contractor's and its subcontractors' liability policies (except for workers' compensation and professional liability insurance) shall be endorsed using ISO form CG 20 01 04 13 or its equivalent so as to indicate that such policies provide primary coverage (without any right of contribution by any other insurance, reinsurance or self-insurance, including any deductible or retention, maintained by an Additional Insured) for all claims against the additional insured arising out of the performance of this Statement of Work by the Contractor or its subcontractors, or anyone for whom the Contractor or its subcontractors may be liable. These policies shall include a separation of insureds clause applicable to the additional insured.

If the Contractor and/or its subcontractors maintain broader coverage and/or higher limits than the minimums shown below, the District requires and shall be entitled to the broader coverage and/or the higher limits maintained by the Contractor and subcontractors.

B. INSURANCE REQUIREMENTS

1. Commercial General Liability Insurance ("CGL") - The Contractor shall provide evidence satisfactory to the CO with respect to the services performed that it carries a CGL policy, written on an occurrence (not claims-made) basis, on Insurance Services Office, Inc. ("ISO") form CG 00 01 04 13 (or another occurrence-based form with coverage at least as broad and approved by the CO in writing), covering liability for all ongoing and completed operations of the Contractor and under all subcontracts, covering claims for bodily injury, including without limitation sickness, disease or death and mental anguish of any persons, broad form property damage, including loss of use resulting therefrom, personal and advertising injury, and including coverage for liability arising out of an Insured Contract (including the tort liability of another assumed in a contract) and acts of terrorism (whether caused by a foreign or domestic source). Such coverage shall have limits of liability of not less than $1,000,000 each occurrence, a $2,000,000 general aggregate.

The Commercial General Liability shall be further endorsed to:

a) To the fullest extent permitted by law, provide additional insured coverage using ISO form CG 2015 0413 (or it's equivalent) to The Government of the District of Columbia
b) Coverage available to the additional insureds shall apply on a primary and non-contributing basis as respects any other insurance, deductibles, or self-insurance available to the additional insureds
c) A waiver of subrogation in favor of The Government of the District of Columbia
d) Any Annual Aggregate shall apply on a per location or per project basis (where applicable)
e) Defense costs shall be in addition to and not erode the limits of liability

2. Automobile Liability Insurance - The Contractor shall provide evidence satisfactory to the CO of commercial (business) automobile liability insurance written on ISO form CA 00 01 10 13 (or another form with coverage at least as broad and approved by the CO in writing) including coverage for all owned, hired, borrowed and non-owned vehicles and equipment used by the Contractor in connection with work under this agreement, with a minimum combined single limit of $1,000,000 for bodily injury or death and property damage, including loss of use thereof. Such policy or policies of automobile liability insurance shall be written on an "occurrence" (as opposed to a "claims made") basis.

Auto Physical Damage Coverage - The Contractor shall provide auto physical damage insurance to cover "loss" to a covered "auto" or its equipment:

a) Comprehensive - Fire, lightning or explosion; theft; windstorm, hail or earthquake; flood; mischief or vandalism; or the sinking, burning, collision or derailment of any conveyance transporting the covered "auto".
b) Collision Coverage - Caused by: The covered "auto's" collision with another object or the covered "auto's" overturn.

The Commercial Auto Liability policy shall be further endorsed to:

a. To the fullest extent permitted by law, provide additional insured coverage to The Government of the District of Columbia
b. Coverage available to the additional insureds shall apply on a primary and non-contributing basis as respects any other insurance, deductibles, or self-insurance available to the additional insureds
c. A waiver of subrogation in favor of The Government of the District of Columbia
d. Defense costs shall be in addition to and not erode the limits of liability
e. If applicable, include Form CA 99 48 03 06 Pollution Liability - Broadened Coverage for Covered Autos - Business Auto, Motor Carrier and Truckers (or it's equivalent)

3. Workers' Compensation Insurance - The Contractor shall provide evidence satisfactory to the CO of Workers' Compensation insurance in accordance with the statutory mandates of the District of Columbia or the jurisdiction in which the contract is performed.

   Employer's Liability Insurance - The Contractor shall provide evidence satisfactory to the CO of employer's liability insurance as follows: $500,000 per accident for injury; $500,000 per employee for disease; and $500,000 for policy disease limit.

   The Workers Compensation and Employers Liability shall be further endorsed to:
   a) Include a Waiver of Subrogation in favor of The Government of the District of Columbia.
   b) Where applicable, include United States Longshore and Harbor Workers Compensation Act (USL&H)
   c) Where applicable, include Jones Act Coverage for seamen or crew members on an "if any" basis.

4. Network Security/Privacy (Cyber) Liability Insurance covering acts, errors, omissions, breach of contract, and violation of any consumer protection laws arising out of Contractor's operations or services with a limit of $5,000,000 per claim and in the aggregate. Such coverage shall include but not be limited to, third party and first party coverage for loss or disclosure of any data, including personally identifiable information and payment card information, network security failure, violation of any consumer protection laws, unauthorized access and/or use or other intrusions, infringement of any intellectual property rights (except patent), unintentional breach of contract, negligence or breach of duty to use reasonable care, breach of any duty of confidentiality, invasion of privacy, or violations of any other legal protections for personal information, defamation, libel, slander, commercial disparagement, negligent transmission of computer virus, or use of computer networks in connection with denial of service attacks. Such coverage shall include regulatory defense and fines/penalties in any jurisdiction anywhere in the world. Such coverage shall include contractual privacy coverage for data breach response and crisis management costs that would be incurred by Contractor on behalf of The Government of the District of Columbia in the event of a data breach including legal and forensic expenses, notification costs, credit monitoring costs, and costs to operate a call center. Contractor shall maintain coverage in force during the term of this Agreement and for an extended reporting period of not less than two (2) years after.

5. Professional Liability Insurance (Errors & Omissions) - The Contractor shall provide Professional Liability Insurance (Errors and Omissions) to cover liability resulting from any error or omission in the performance of professional services under this Contract. The policy shall provide limits of $5,000,000 per claim or per occurrence for each wrongful act and $5,000,000 annual aggregate. The Contractor warrants that any applicable retroactive date precedes the date the Contractor first performed any professional services for the Government of the District of Columbia and that continuous coverage will be maintained or an extended reporting period will be exercised for a period of at least ten years after the completion of the professional services. Limits may not be shared with other lines of coverage.

6. Commercial Umbrella or Excess Liability - The Contractor shall provide evidence satisfactory to the CO of commercial umbrella or excess liability insurance with minimum limits of $10,000,000 per occurrence and $10,000,000 in the annual aggregate, following the form and in excess of all liability policies. **All** liability coverages must be scheduled under the umbrella and/or excess policy. The insurance required under this paragraph shall be written in a form that annually reinstates all required limits. Coverage shall be primary to any insurance, self-insurance or reinsurance maintained by The Government of the District of Columbia and the "other insurance" provision must be amended in accordance with this requirement and principles of vertical exhaustion.

C. SUBCONTRACTOR INSURANCE REQUIREMENTS

Any and all subcontractors engaged by Contractor for work under this agreement shall be required to have the same insured required of Contractor. Should the Contractor wish to propose different insurance requirements than outlined below, then, prior to commencement of work by the subcontractor, the Contractor shall submit in writing the name and brief description of work to be performed by the subcontractor on the Subcontractors Insurance Requirement Template provided to the Office of Risk Management (ORM). ORM will determine the insurance requirements applicable to the subcontractor and promptly deliver such requirements in writing to the Contractor. In either instance, the Contractor must provide proof of the subcontractor's required insurance prior to commencement of work by the subcontractor.

D. PRIMARY AND NONCONTRIBUTORY INSURANCE
The insurance required herein shall be primary to and will not seek contribution from any other insurance, reinsurance or self-insurance including any deductible or retention, maintained by the Government of the District of Columbia.

E. DURATION. The Contractor shall carry all required insurance until all contract work is accepted by The Government of the District of Columbia and shall carry listed coverages for ten years for construction projects following final acceptance of the work performed under this contract and two years for non-construction related contracts.

F. LIABILITY. These are the required minimum insurance requirements established by The Government of the District of Columbia. However, it is understood that The Government of the District of Columbia does not in any way represent that the insurance or the limits of insurance specified herein are sufficient or adequate to protect your interests or liabilities and will not in any way limit the contractor's liability under this contract.

G. CONTRACTOR'S PROPERTY. Contractor and subcontractors are solely responsible for any loss or damage to their personal property, including but not limited to tools and equipment, scaffolding and temporary structures, rented machinery, or owned and leased equipment. A waiver of subrogation shall apply in favor of The Government of the District of Columbia.

H. MEASURE OF PAYMENT. The Government of the District of Columbia shall not make any separate measure or payment for the cost of insurance and bonds. The Contractor shall include all of the costs of insurance and bonds in the contract price.

I. NOTIFICATION. The Contractor shall ensure that all policies provide that the CO shall be given thirty (30) days prior written notice in the event of cancellation, non-renewal, or material changes to the extent such cancellation or material changes results in Contractor no long complying with the above requirements. The Contractor shall provide the CO with ten (10) days prior written notice in the event of non-payment of premium. The Contractor will also provide the CO with an updated Certificate of Insurance should its insurance coverages renew during the contract. The Government of the District of Columbia may reasonably change the above insurance coverage requirements during the Term by giving Contractor at least 30 days' notice of the change. Contractor must comply, at your expense, and deliver to the CO evidence of compliance before the change becomes effective.

J. CERTIFICATES OF INSURANCE. The Contractor must send to CO, at least 10 days after execution of this Agreement, certificates of insurance evidencing the required insurance coverage and endorsements required herein. Contractor must also provide us with evidence of renewal before the expiration date of each insurance policy. Contractor is responsible for providing us with 30 days advanced written notice if the certificate of insurance by the insurer has been canceled, reduced in coverage, or otherwise altered. . Certificates of insurance must reference the corresponding contract number. Evidence of insurance shall be submitted to:

The Government of the District of Columbia

And mailed to the attention of:
Gena Johnson
400 6th Street, NW
Washington, DC 20001
202-247-6448
Gena.johnson@dc.gov

The CO may request and the Contractor shall promptly deliver updated certificates of insurance, endorsements indicating the required coverages, and/or certified copies of the insurance policies. If the insurance initially obtained by the Contractor expires prior to completion of the contract, renewal certificates of insurance and additional insured and other endorsements shall be furnished to the CO prior to the date of expiration of all such initial insurance. For all coverage required to be maintained after completion, an additional certificate of insurance evidencing such coverage shall be submitted to the CO on an annual basis as the coverage is renewed (or replaced).

K. DISCLOSURE OF INFORMATION. The Contractor agrees that The Government of the District of Columbia may disclose the name and contact information of its insurers to any third party which presents a claim against The Government of the District of Columbia for any damages or claims resulting from or arising out of work performed by the Contractor, its agents, employees, servants or subcontractors in the performance of this contract.

L. CARRIER RATINGS. All Contractor's and its subcontractors' insurance required in connection with this contract shall be written by insurance companies with an A.M. Best Insurance Guide rating of at least A- VII or better (or the equivalent by any other rating agency) and licensed in the District of Columbia.

M. WARRANTIES. When applicable, the Contractor should be named as an additional insured on the applicable manufacturer's/distributer's Commercial General Liability policy using Insurance Services Office, Inc. ("ISO") form CG 20 15 04 13 (or another occurrence-based form with coverage at least as broad). CO should collect, review for accuracy, and maintain all warranties for goods and services.

I.3 CONFIDENTIALITY OF INFORMATION

The Contractor shall keep all information relating to the Matter in absolute confidence and shall not use the information in connection with any other matters; nor shall it disclose any such information to any other person, firm or corporation, in accordance with the District and federal laws governing the confidentiality of records.

I.4 SUBCONTRACTS

Contractor shall not subcontract any of the Contractor's work or services to any subcontractor without the prior written consent of the CO. Any work or service so subcontracted shall be performed pursuant to a subcontract agreement, which the District will have the right to review and approve prior to its execution by the Contractor. Any such subcontract shall specify that Contractor and the subcontractor shall be subject to every provision of this Contract. Notwithstanding any such subcontract approved by the District, Contractor shall remain liable to the District for all Contractor's work and services required hereunder.

I.5 EQUAL EMPLOYMENT OPPORTUNITY

Contractor shall satisfy equal employment opportunity requirements and maintain compliance with the District of Columbia Administrative Issuance System, Mayor's Order 85-85 dated June 10, 1985,

I.6 ORDER OF PRECEDENCE

A conflict in language shall be resolved by giving precedence to the document in the highest order of priority that contains language addressing the issue in question. The following documents are incorporated into the Contract by reference and made a part of the contract in the following order of precedence:

(1) An applicable Court Order, if any
(2) Contract document
(3) Supplemental Contract Provisions
(4) Standard Contract Provisions
(5) Contract attachments other than the Standard Contract Provisions
(6) The Letter Contract dated May 26, 2023

SECTION J: LIST OF DOCUMENTS, EXHIBITS AND OTHER ATTACHMENTS

The following attachments are incorporated into this Contract by reference or by attachment. If Incorporated by reference, they may be found at https://ocp.dc.gov/node/599822.

Attachment Number	Document
J.1	Government of the District of Columbia Standard Contract Provisions for Use with Supplies and Services Contracts (July 2010)
J.2	Supplemental Contract Provisions to Standard Contract Provisions (August 2023)
J.3	Living Wage Act of 2006 - Living Wage Notice
J.4	Living Wage Act of 2006 - Living Wage Fact Sheet
J.5	Identified Targets (Confidential)

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of the Attorney General

LETTER CONTRACT

May 17, 2023

Emmy Levens
Cohen Milstein Sellers & Toll PLLC
1100 New York Ave. NW, Fifth Floor
Washington, DC 20005

RE: Letter Contract Number DCCB-2023-F-0039
Outside Counsel [redacted]

Dear Ms. Levens:

This is a letter contract between the Office of the Attorney General for the District of Columbia (OAG) and the law firm of Cohen Milstein Sellers & Toll PLLC (Contractor) (the Letter Contract), wherein Contractor agrees to provide legal services on a contingency fee basis, in accordance with the attached Statement of Work (Attachment 1), to assist with investigation of, and potential litigation [redacted] for violation of D.C. and federal antitrust laws (the Matter).

This Letter Contract is being awarded to allow the Contractor to begin work immediately while OAG obtains the necessary approval by the Council of the District of Columbia (Council) for the definitized contract. Contractor agrees to timely submit to the Contracting Officer requested documents or information reasonably necessary to obtain Council approval. If OAG realizes a monetary recovery in the Matter before the Letter Contract is definitized, the proceeds shall be deposited into an appropriate District of Columbia account, and Contractor shall be entitled to receive a contingency fee and certain actual direct costs, in accordance with Paragraph B.4 of the Statement of Work, up to and including $999,000.00. **The maximum amount to which Contractor is entitled for any and all monetary recovery realized by OAG prior to the definitization of the Letter Contract is $999,000.00.**

OAG intends to definitize this Letter Contract within 180 days from the award of the Letter Contract, at which time this Letter Contract shall merge with the definitive contract. Before the expiration of the 180 days, the Contracting Officer may authorize an additional extension of the Letter Contract in accordance with 27 DCMR § 5028.1(e). If OAG does not definitize the Letter Contract within 180 days of the effective date of the Letter Contract, or within any extension thereof, the Letter Contract is

automatically terminated without recourse or liability between the OAG and the Contractor.

Contractor shall immediately begin performance of this Letter Contract once fully executed pursuant to the following documents, which are hereby incorporated by reference into this Letter Contract and listed in order of priority:

1) The Letter Contract;
2) Statement of Work (Attachment 1)
3) Supplemental Provisions to District of Columbia Standard Contract Provisions for Use with Supplies and Services Contracts (July 2010) (Attachment 2)
4) District of Columbia Standard Contract Provisions for Use with Supplies and Services Contracts (July 2010) (Attachment 3)
5) Provision regarding Ethical Obligations and Legal Conflicts of Interest (Attachment 4)
6) D.C. Bar Legal Ethics Committee Opinion No. 268 (Attachment 5)

SIGNED AND ACCEPTED FOR THE CONTRACTOR BY:

Emmy Levens — 5/18/2023
Emmy Levens — Date
Partner
Cohen Milstein Sellers & Toll PLLC

SIGNED AND ACCEPTED FOR OAG BY:

Gena Johnson — 5/26/2023
Gena Johnson — Date
Contracting Officer

SECTION B: CONTRACT TYPE, SUPPLIES OR SERVICES AND PRICE/COST

B.1 The Office of the Attorney General for the District of Columbia ("OAG" or "the District") engages Cohen Milstein Sellers & Toll PLLC ("Contractor") to assist the OAG Public Advocacy Division (PAD) with an investigation of and potential litigation [redacted] for violation of District of Columbia and federal antitrust laws ("the Matter").

B.2 RESERVED

B.3 In accordance with 27 DCMR 5025.3, OAG hereby awards a contingency fee contract with a cost-reimbursement component (Contract) to Contractor. Contractor shall represent OAG on a contingency fee basis and, if OAG realizes a monetary recovery, shall receive, in accordance with the terms of the Contract, a percentage of any Net Recovery and reimbursement of actual direct costs and expenses, as defined herein. **If no monetary recovery is realized, Contractor shall receive no compensation whatsoever from the District.** Payment to Contractor shall not exceed 50% of the Net Recovery realized by the District.

B.4 COMPENSATION

B.4.1 Prior to, as a pre-condition of, the calculation of any compensation owed to Contractor from the District, Contractor shall use its best efforts to seek its usual and customary allowable attorney fees and costs and expenses from the target(s) of the investigation and/or the defendant(s) (collectively "Target").

B.4.2 CONTINGENCY FEE

B.4.2.1 Contractor shall only be entitled to compensation if the District realizes a monetary recovery, either through settlement, judgment or otherwise, in the Matter. For the purposes if the Contract, the District "realizes" or "obtains" a monetary payment only when such amount has been deposited in an appropriate District account.

B.4.2.2 The District agrees to pay Contractor a percentage of the net recovery amount (Net Recovery), as described in the Price Schedule at Section B.5, subject to the requirements of Paragraph B.4.4 (Contingency Fee).The Net Recovery shall be calculated by deducting Contractor's Reimbursable Costs, up to the Not-to-Exceed (NTE) amount identified in the Price Schedule at Section B.5, from the Gross Recovery, as defined in Paragraph B.4.2.3. For illustrative purposes, if the Gross Recovery is $50,000,000.00, and the Reimbursable Cost NTE amount is $5,000,000.00, the Net Recovery is $45,000,000.00.

B.4.2.3 The gross recovery amount (Gross Recovery) is the present value of any monetary recovery realized by the District for the Matter as a result of Contractor's representation of the District whether by settlement, pursuant to court judgment following trial or appeal, or otherwise. Gross Recovery does not include attorney fees included in a settlement agreement or awarded to the District for OAG attorney and staff time. Gross Recovery may come from any source, including, but not limited to, Targets and/or their insurance carriers and/or any third party, whether or not a party to such investigation or cause of action.

B.4.3 REIMBURSABLE COSTS

B.4.3.1 Reimbursable costs are actual direct costs, as further described in Section C.10 incurred by Contractor while performing services under this Contract (Reimbursable Costs). Contractor shall be responsible for all of its costs and expenses incurred throughout the investigation and litigation.

B.4.3.2 Contractor will only be entitled to recover Reimbursable Costs if the District obtains a monetary recovery and then only to the extent that Contractor does not recover such costs from the Targets. To be clear, **for the purposes of calculating the District's liability for Reimbursable Costs only**, if Contractor is able to recover, $1,000,000.00 of its expenses from the Targets and the Reimbursable Cost NTE amount is $5,000,000.00, the District will only pay Reimbursable Costs up to the NTE amount of $4,000,000.00. Reimbursable Costs received from the Targets in no way changes the Reimbursable Costs NTE amount for the purpose of calculating Net Recovery.

B.4.3.3 In the event there is no monetary recovery, the District will not pay any Reimbursable Costs. The District understands and agrees, however, that if it incurs internal costs attributable to efforts of its own personnel in overseeing and aiding in the investigation and litigation, such as the District's own internal discovery-related costs, any such internal costs will not be reimbursed by Contractor to the District.

B.4.3.4 If Contractor is hired for multiple matters against multiple defendants under one contract, Contractor will only be entitled to fees, costs, and expenses for a matter against a defendant from which the District obtains a recovery (including costs of the matter fairly allocated to that defendant), and Contractor will not be entitled to fees, costs, or expenses solely allocated to any matter against a defendant where there is no recovery by the District.

B.4.4 ATTORNEY FEES

B.4.4.1 Contractor understands and agrees that it shall not be entitled to any separate payment for attorney fees. In the event that the District realizes a monetary recovery, even if Contractor is unable to recover its attorney fees from the Targets, the only compensation

from the District shall be the Contingency Fee and Reimbursable Costs, pursuant to Sections B.4.2 and B.4.3.

B.4.4.2 If Contractor recovers attorney fees from the Targets, whether in full or in part, such fees shall be deducted from the Contingency Fee. For illustrative purposes only, if the Net Recovery is $50,000,000.00 (recovered after litigation is filed), the Contingency Fee (15%) is $7,500,000.00; and if Contractor sought $3,000,000.00 in attorney fees from the Targets and the Court awarded $2,000,000.00, Contractor is entitled to a Contingency Fee of $5,500,000.00 ($7,500,000.00 - $2,000,000.00).

B.4.5 In no event will the District be required to compensate Contractor out of any fund other than monies recovered in the Matter.

B.5 PRICE SCHEDULE

B.5.1 BASE PERIOD – FIVE (5) YEARS

Contract Line Item No. (CLIN)	Services	Percentage of Net Recovery	Not to Exceed Amount *
0001	All Legal Services as described in Section C, Statement of Work, upon recovery by the District as outlined in 0001A, 0001B and 0001C below:		$80,000,000.00+
0001A	Contingency Fee if recovery obtained during the investigative phase of the Matter prior to filing a formal complaint	10%	
0001B	Contingency Fee if recovery obtained after the filing of a complaint but prior to the case proceeding to trial	15%	
0001C	Contingency Fee if recovery obtained once trial commences (i.e. when jury selection begins)	18%	
0002	Reimbursable Costs as described in G.3	NA	$10,000,000.00
	TOTAL NOT-TO-EXCEED CONTRACT AMOUNT		**$90,000.000.00**

*** The fees for the Base Period and each Option Period are not cumulative, but represent a single NTE amount. Although money may be recovered by different Targets and different times, the NTE amount in B.5 is the maximum cumulative amount to which the Contractor may be entitled for the entire contract, including option periods.**

+ In accordance with clause 15, Changes, of the Standard Contract Provisions, the CO may

agree to raise the NTE amount if the CO determines that such increase is warranted; however, any such modification to the contract that exceeds $1M is subject to Council approval.

B.5.2 OPTION PERIOD ONE (1) (YEARS SIX AND SEVEN)

Contract Line Item No. (CLIN)	Services	Percentage of Net Recovery	Not to Exceed Amount *
1001	All Legal Services as described in Section C, Statement of Work, upon recovery by the District as outlined in 1001A, 1001B and 1001C below:		$80,000,000.00+
1001A	Contingency Fee if recovery obtained during the investigative phase of the Matter prior to filing a formal complaint	10%	
1001B	Contingency Fee if recovery obtained after the filing of a complaint but prior to the case proceeding to trial	15%	
1001C	Contingency Fee if recovery obtained once trial commences (i.e. when jury selection begins)	18%	
1002	Reimbursable Costs as described in G.3	NA	$10,000,000.00
	TOTAL NOT-TO-EXCEED CONTRACT AMOUNT		**$90,000.000.00**

*** The fees for the Base Period and each Option Period are not cumulative, but represent a single NTE amount. Although money may be recovered by different Targets and different times, the NTE amount in B.5 is the maximum cumulative amount to which the Contractor may be entitled for the entire contract, including option periods.**

+ In accordance with clause 15, Changes, of the Standard Contract Provisions, the CO may agree to raise the NTE amount if the CO determines that such increase is warranted; however, any such modification to the contract that exceeds $1M is subject to Council approval.

B.5.3 OPTION PERIOD TWO (2) (YEARS EIGHT AND NINE)

Contract Line Item No. (CLIN)	Services	Percentage of Net Recovery	Not to Exceed Amount *
2001	All Legal Services as described in Section C, Statement of Work, upon recovery by the District as outlined in 2001A, 2001B and 2001C below:		$80,000,000.00+
2001A	Contingency Fee if recovery obtained during the investigative phase of the Matter prior to filing a formal complaint	10%	
2001B	Contingency Fee if recovery obtained after the filing of a complaint but prior to the case proceeding to trial	15%	
2001C	Contingency Fee if recovery obtained once trial commences (i.e. when jury selection begins)	18%	
2002	Reimbursable Costs as described in G.3	NA	$10,000,000.00
	TOTAL NOT-TO-EXCEED CONTRACT AMOUNT		**$90,000.000.00**

*** The fees for the Base Period and each Option Period are not cumulative, but represent a single NTE amount. Although money may be recovered by different Targets and different times, the NTE amount in B.5 is the maximum cumulative amount to which the Contractor may be entitled for the entire contract, including option periods.**

+ In accordance with clause 15, Changes, of the Standard Contract Provisions, the CO may agree to raise the NTE amount if the CO determines that such increase is warranted; however, any such modification to the contract that exceeds $1M is subject to Council approval.

SECTION C: SPECIFICATIONS/STATEMENT OF WORK

C.1 SCOPE:

OAG engages Contractor to assist the PAD with investigation of and potential litigation in the Matter, including potential consumer protection and False Claims Act violations.

OAG will retain sole authority at all times to direct the investigation and litigation in all respects, including but not limited to, whether and when to initiate litigation,

against whom actions will be taken, the claims to be brought in said litigation, approval and/or rejection of settlements and the amount and type of damages to be requested.

C.1.1 APPLICABLE LAWS

The following laws are applicable to this procurement:

Item No.	Document Type	Title	Date
1	D.C. Code	Consumer Protection Procedures Act D.C. Code § 28-3901 et seq.	Most recent
2	D.C. Code	False Claims Act D.C. Code § 2-881.01 et seq.	Most recent
3	D.C. Code Ann.	Restraints of Trade D.C. Code § 28-4501, et seq.	Most recent
4	U.S. Code	Trusts, etc., in restraint of trade illegal; penalty 15 U.S.C. § 1, et seq	Most recent

C.2 RESERVED

C.3 BACKGROUND

[redacted]

C.4 REQUIREMENTS

C.4.1 Contractor shall perform legal services that include, but are not limited to the following:

C.4.1.1 Assist OAG with the investigation of potential violations of the law by the Targets.

C.4.1.2 If violations of law are identified as a result of the investigation, assist in the litigation against the Targets. Contractor shall assist in all phases of these investigations and litigations, including:

a. Preparation, filing, and service of all offensive and responsive pleadings;

b. Preparation and service of all offensive and defensive discovery;

c. Document review and management;

d. Coordinating litigation with other states and the federal government to promote, to the extent beneficial, a unified approach to litigation;

e. Taking depositions, defending depositions, preparing witnesses for depositions;

f. Identifying and managing experts needed to analyze, develop, or prove the District's case;

g. Participation and conduct of representation of the District in court hearings, oral arguments, trials, and settlement negotiations;

h. Coordination and conduct of any needed appeals.

C.4.1.3 **FOIA Assistance.** Third parties may submit FOIA requests to OAG or the District regarding this Matter. OAG will notify Contractor of the FOIA request and Contractor shall electronically provide, within the timeframe specified by the CA, all records responsive to the FOIA request. In addition, Contractor shall make all records regarding this Matter available for examination and review by OAG, upon request. Contractor shall be entitled to reimbursement of costs for searching and copying records as set forth in the Standard Contract Provisions Paragraph 34, Freedom of Information Act.

C.4.1.4 Provide regular status reports to the Contract Administrator.

C.4.1.5 Provide legal services to OAG for this litigation in a manner consistent with accepted standards of practice in the legal profession. The Attorney General for the Office of the Attorney General of the District of Columbia (the Attorney General) shall have final authority over all aspects of this litigation. The litigation may be commenced, conducted, settled, approved and ended only with the express written approval of the Attorney General.

C.4.1.6 Coordinate the provision of legal services with the Attorney General or his or her designated assistant, other personnel of OAG, and such others as the Attorney General may appoint. The Attorney General, at his or her sole discretion, has the right to appoint a designated assistant ("Government Attorney") to oversee the litigation, which appointment the Attorney General may modify at will.

C.4.1.7 Submit all substantive pleadings, motions, briefs, and other material which may be filed with a court to OAG in draft form in a reasonable and timely manner for review. All such material must be approved by the Attorney General or appointed designee prior to filing.

C.4.1.8 Communicate with the District's executive branch and agencies through OAG unless authorized by OAG to communicate directly with any of them.

C.4.1.9 Render services pursuant to this Contract as an independent contractor. Neither Contractor nor any employee of Contractor shall be regarded as employed by, or as an employee of, OAG.

C.5 Notice Requirements for Reimbursable Costs

Contractor shall provide notice to, and obtain approval from, OAG prior to incurring any individual Reimbursable Cost greater than $5,000. Notwithstanding the foregoing, Contractor shall provide notice to, and obtain written approval from OAG before engaging any expert witness or other consultants regardless of cost.

C.6 Key Personnel and Point of Contact

C.6.1 Key Personnel for this Contract are listed below:

Emmy Levens (elevens@cohenmilstein.com)
Robert Braun (rbraun@cohenmilstein.com)
Aaron Marks (amarks@cohenmilstein.com)
Cohen Milstein Sellers & Toll PLLC
1100 New York Ave. NW, Fifth Floor
Washington, DC 20005

C.6.2 Point of Contact

Contractor designates the following individual as the Point of Contact for all communication with OAG.

Emmy Levens (elevens@cohenmilstein.com)
Cohen Milstein Sellers & Toll PLLC
1100 New York Ave. NW, Fifth Floor
Washington, DC 20005

C.7 Diversion, Reassignment, and Replacement of Key Personnel or Point of Contact

The key personnel and point of contact specified in Section C.6 are considered to be essential to the work being performed hereunder. Prior to diverting any of the specified key personnel for any reason, Contractor shall notify the Contracting Officer at least thirty (30) calendar days in advance and shall submit justification, including proposed substitutions, in sufficient detail to permit evaluation of the impact upon the Contract. Contractor shall obtain prior written approval of the CO for any proposed substitution of key personnel.

C.8 CONTRACT ADMINISTRATOR (CA)

The Contract Administrator is responsible for general administration of the Contract and advising the CO as to Contractor's compliance or noncompliance with the Contract**.** The CA has the responsibility of ensuring the work conforms to the requirements of the Contract and such other responsibilities and authorities as may be specified in the Contract. The Contract Administrator for this Contract is:

Adam Gitlin (adam.gitlin@dc.gov)
Chief, Antitrust and Nonprofit Enforcement Section
Public Advocacy Division
Office of the Attorney General for the District of Columbia
400 6th Street NW
Washington, D.C. 20001
Tel.: 202-442-9864

C.9 DELIVERABLES

Contractor shall perform the activities required to successfully complete the District's requirements and submit each deliverable, including but not limited to the deliverables in the table below, to the Contract Administrator (CA) identified in section C.8. The Point of Contact identified in Paragraph C.6.2 shall be responsible for submitting all deliverables.

SOW Section	Deliverable	Quantity	Format/Method of Delivery	Due Date
C.4.1.2 a.	Preparation, filing, and service of all offensive and responsive pleadings	TBD	PDF/Electronic	Ongoing, as requested
C.4.1.2 b.	Preparation and service of all offensive and defensive discovery	TBD	PDF/Electronic	Ongoing
C.4.1.2 e.	Depositions	TBD	PDF/Electronic	Ongoing
C.4.1.3	Records responsive to a FOIA request	TBD	PDF/Electronic	Within five (5) business days of request
C.4.1.4	Status Reports	TBD	PDF/Electronic	Ongoing
C.4.1.7	Drafts of substantive pleadings, motions, briefs, and other material which may be filed with the court	TBD	PDF/Electronic	Ongoing
C.5	Notice of reimbursable cost greater than $5,000 or Notice of intent to engage expert witness or other consultant	TBD	Electronic	Prior to incurring cost
C.7	Notification of diversion of key personnel or point of contact	TBD	Electronic	At least 30 days in advance

C.10 REIMBURSABLE COSTS

C.10.1 Contractor shall only be entitled to Reimbursable Costs to the extent that Contractor is not able to recover its costs and expenses in accordance with Paragraph B.4.3. Reimbursable Costs shall not exceed the Reimbursable Costs NTE amount described in the Price Schedule at B.5 (for the purposes of this Section C.10, the NTE is also referred to as "cost reimbursement ceiling").

C.10.2 Contractor agrees that Reimbursable Costs shall only include: (i) court fees and costs, (ii) fees and expenses of consulting and testifying experts and their staff, (iii) deposition costs, including court reporters, videographers, and transcription costs, (iv) trial costs, including trial preparation expenses and costs, jury consultants, and exhibit/graphics expenses; (v) document hosting and storage, document review platforms, or litigation management applications charges specific to the Matter; (vi) reasonable travel expenses; (vii) costs associated with special master or alternative dispute resolution services; (vii) actual out of pocket costs associated with computerized research – Lexis/Westlaw; (ix) charges for outside vendor document reproduction which, because of volume or format, is impractical to complete in-house; (x) fees for service of process; and (xi) any costs for which Contractor obtains prior written approval.
The costs incurred for lodging, meals, and incidental expenses shall be considered to be reasonable and allowable only to the extent that they do not exceed on a daily basis the maximum per diem rates in effect at the time of travel as set forth in the Federal Travel Regulations, prescribed by the General Services Administration. The Contractor shall not incur any such cost, for which it may seek reimbursement, that exceeds $5,000 without the Contract Administrator's (CA) prior written approval. Costs exceeding $5,000 that did not receive the CA's prior written approval, shall not be included in the calculation of Reimbursable Costs.

C.10.3 Contractor agrees to use its best efforts to perform the work specified in this Contract and to meet all obligations under this Contract within the cost reimbursement ceiling.

C.10.4 Contractor must notify the Contracting Officer (CO), in writing, whenever it has reason to believe that the total amount for Reimbursable Costs will be greater than the cost reimbursement ceiling.

C.10.5 As part of the notification, Contractor must provide the CO a revised estimate of the total cost of performing this Contract.

C.10.6 Contractor shall not be entitled to any costs in excess of the Reimbursement Cost NTE amount, whether such costs were incurred during the course of contract performance or as a result of termination. The CO may raise the NTE amount if the CO determines that such costs are necessary for successful investigation and/or litigation of the Matter, and such determination will not be unreasonably withheld. The CO will notify Contractor in writing that the estimated cost has been increased and provide a revised

cost reimbursement ceiling for performing this Contract.

C.10.7 Only the Contracting Officer has the authority to change the cost reimbursement ceiling. If any cost reimbursement ceiling specified in Section B.5 is increased, any costs Contractor incurs before the increase that are in excess of the previous cost reimbursement ceiling shall be allowable to the same extent as if incurred afterward, unless the CO issues a termination or other notice directing that the increase is solely to cover termination or other specified expenses.

C.10.8 Contractor must maintain a system, using Generally Accepted Accounting Practices, to track expenses that, at minimum, can provide an itemized list of expenses.

C.11 INSURANCE (May 2023)

A. GENERAL REQUIREMENTS. The Contractor at its sole expense shall procure and maintain, during the entire period of performance under this contract, the types of insurance specified below. The Contractor shall submit a Certificate of Insurance to the Contracting Officer (CO) giving evidence of the required coverage prior to commencing performance under this contract. In no event shall any work be performed until the required Certificates of Insurance signed by an authorized representative of the insurer(s) have been provided to, and accepted by, the CO.

The Government of the District of Columbia shall be included in all policies, where applicable and allowable by law, required hereunder to be maintained by the Contractor and its subcontractors (except for workers' compensation and professional liability insurance) as an additional insureds for claims against The Government of the District of Columbia relating to this contract, with the understanding that any affirmative obligation imposed upon the insured Contractor or its subcontractors (including without limitation the liability to pay premiums) shall be the sole obligation of the Contractor or its subcontractors, and not the additional insured. The additional insured status under the Contractor's and its subcontractors' Commercial General Liability insurance policies shall be effected using the ISO Additional Insured Endorsement form CG 20 10 11 85 (or CG 20 10 07 04 **and** CG 20 37 07 04) or such other endorsement or combination of endorsements providing coverage at least as broad and approved by the CO in writing. All of the Contractor's and its subcontractors' liability policies (except for workers' compensation and professional liability insurance) shall be endorsed using ISO form CG 20 01 04 13 or its equivalent so as to indicate that such policies provide primary coverage (without any right of contribution by any other insurance, reinsurance or self-insurance, including any deductible or retention, maintained by an Additional Insured) for all claims against the additional insured arising out of the performance of this Statement of Work by the Contractor or its subcontractors, or anyone for whom the Contractor or its subcontractors may be liable. These policies shall include a separation of insureds clause applicable to the additional insured.

If the Contractor and/or its subcontractors maintain broader coverage and/or higher limits than the minimums shown below, the District requires and shall be entitled to the broader coverage and/or the higher limits maintained by the Contractor and subcontractors.

B. INSURANCE REQUIREMENTS

1. Commercial General Liability Insurance ("CGL") - The Contractor shall provide evidence satisfactory to the CO with respect to the services performed that it carries a CGL policy, written on an occurrence (not claims-made) basis, on Insurance Services Office, Inc. ("ISO") form CG 00 01 04 13 (or another occurrence-based form with coverage at least as broad and approved by the CO in writing), covering liability for all ongoing and completed operations of the Contractor and under all subcontracts, covering claims for bodily injury, including without limitation sickness, disease or death and mental anguish of any persons, broad form property damage, including loss of use resulting therefrom, personal and advertising injury, and including coverage for liability arising out of an Insured Contract (including the tort liability of another assumed in a contract) and acts of terrorism (whether caused by a foreign or domestic source). Such coverage shall have limits of liability of not less than $1,000,000 each occurrence, a $2,000,000 general aggregate.

   The Commercial General Liability shall be further endorsed to:
   a) To the fullest extent permitted by law, provide additional insured coverage using ISO form CG 2015 0413 (or it's equivalent) to The Government of the District of Columbia
   b) Coverage available to the additional insureds shall apply on a primary and non-contributing basis as respects any other insurance, deductibles, or self-insurance available to the additional insureds
   c) A waiver of subrogation in favor of The Government of the District of Columbia
   d) Any Annual Aggregate shall apply on a per location or per project basis (where applicable)
   e) Defense costs shall be in addition to and not erode the limits of liability

2. Automobile Liability Insurance - The Contractor shall provide evidence satisfactory to the CO of commercial (business) automobile liability insurance written on ISO form CA 00 01 10 13 (or another form with coverage at least as broad and approved by the CO in writing) including coverage for all owned, hired, borrowed and non-owned vehicles and equipment used by the Contractor in connection with work under this agreement, with a minimum combined single limit of $1,000,000 for bodily injury or death and property damage, including loss of use thereof. Such policy or policies of automobile liability insurance shall be written on an "occurrence" (as opposed to a "claims made") basis.

   Auto Physical Damage Coverage - The Contractor shall provide auto physical damage insurance to cover "loss" to a covered "auto" or its equipment:

a) Comprehensive - Fire, lightning or explosion; theft; windstorm, hail or earthquake; flood; mischief or vandalism; or the sinking, burning, collision or derailment of any conveyance transporting the covered "auto".
b) Collision Coverage - Caused by: The covered "auto's" collision with another object or the covered "auto's" overturn.

The Commercial Auto Liability policy shall be further endorsed to:

a. To the fullest extent permitted by law, provide additional insured coverage to The Government of the District of Columbia
b. Coverage available to the additional insureds shall apply on a primary and non-contributing basis as respects any other insurance, deductibles, or self-insurance available to the additional insureds
c. A waiver of subrogation in favor of The Government of the District of Columbia
d. Defense costs shall be in addition to and not erode the limits of liability
e. If applicable, include Form CA 99 48 03 06 Pollution Liability - Broadened Coverage for Covered Autos - Business Auto, Motor Carrier and Truckers (or it's equivalent)

3. Workers' Compensation Insurance - The Contractor shall provide evidence satisfactory to the CO of Workers' Compensation insurance in accordance with the statutory mandates of the District of Columbia or the jurisdiction in which the contract is performed.

Employer's Liability Insurance - The Contractor shall provide evidence satisfactory to the CO of employer's liability insurance as follows: $500,000 per accident for injury; $500,000 per employee for disease; and $500,000 for policy disease limit.

The Workers Compensation and Employers Liability shall be further endorsed to:

a) Include a Waiver of Subrogation in favor of The Government of the District of Columbia.
b) Where applicable, include United States Longshore and Harbor Workers Compensation Act (USL&H)
c) Where applicable, include Jones Act Coverage for seamen or crew members on an "if any" basis.

4. Network Security/Privacy (Cyber) Liability Insurance covering acts, errors, omissions, breach of contract, and violation of any consumer protection laws arising out of Contractor's operations or services with a limit of $5,000,000 per claim and in the aggregate. Such coverage shall include but not be limited to, third party and first party coverage for loss or disclosure of any data, including personally identifiable information and payment card information, network security failure, violation of any consumer protection laws, unauthorized access and/or use or other intrusions, infringement of any intellectual property rights (except patent), unintentional breach of contract, negligence or breach of duty to use reasonable care, breach of any duty of confidentiality, invasion of privacy, or violations of any other legal protections for personal information, defamation,

libel, slander, commercial disparagement, negligent transmission of computer virus, or use of computer networks in connection with denial of service attacks. Such coverage shall include regulatory defense and fines/penalties in any jurisdiction anywhere in the world. Such coverage shall include contractual privacy coverage for data breach response and crisis management costs that would be incurred by Contractor on behalf of The Government of the District of Columbia in the event of a data breach including legal and forensic expenses, notification costs, credit monitoring costs, and costs to operate a call center. Contractor shall maintain coverage in force during the term of this Agreement and for an extended reporting period of not less than two (2) years after.

5. Professional Liability Insurance (Errors & Omissions) - The Contractor shall provide Professional Liability Insurance (Errors and Omissions) to cover liability resulting from any error or omission in the performance of professional services under this Contract. The policy shall provide limits of $5,000,000 per claim or per occurrence for each wrongful act and $5,000,000 annual aggregate. The Contractor warrants that any applicable retroactive date precedes the date the Contractor first performed any professional services for the Government of the District of Columbia and that continuous coverage will be maintained or an extended reporting period will be exercised for a period of at least ten years after the completion of the professional services. Limits may not be shared with other lines of coverage.

6. Commercial Umbrella or Excess Liability - The Contractor shall provide evidence satisfactory to the CO of commercial umbrella or excess liability insurance with minimum limits of $10,000,000 per occurrence and $10,000,000 in the annual aggregate, following the form and in excess of all liability policies. **All** liability coverages must be scheduled under the umbrella and/or excess policy. The insurance required under this paragraph shall be written in a form that annually reinstates all required limits. Coverage shall be primary to any insurance, self-insurance or reinsurance maintained by The Government of the District of Columbia and the "other insurance" provision must be amended in accordance with this requirement and principles of vertical exhaustion.

C. SUBCONTRACTOR INSURANCE REQUIREMENTS

Any and all subcontractors engaged by Contractor for work under this agreement shall be required to have the same insured required of Contractor. Should the Contractor wish to propose different insurance requirements than outlined below, then, prior to commencement of work by the subcontractor, the Contractor shall submit in writing the name and brief description of work to be performed by the subcontractor on the Subcontractors Insurance Requirement Template provided to the Office of Risk Management (ORM). ORM will determine the insurance requirements applicable to the subcontractor and promptly deliver such requirements in writing to the Contractor. In either instance, the Contractor must provide proof of the subcontractor's required insurance prior to commencement of work by the subcontractor.

D. PRIMARY AND NONCONTRIBUTORY INSURANCE

The insurance required herein shall be primary to and will not seek contribution from any other insurance, reinsurance or self-insurance including any deductible or retention, maintained by the Government of the District of Columbia.

E. DURATION. The Contractor shall carry all required insurance until all contract work is accepted by The Government of the District of Columbia and shall carry listed coverages for ten years for construction projects following final acceptance of the work performed under this contract and two years for non-construction related contracts.

F. LIABILITY. These are the required minimum insurance requirements established by The Government of the District of Columbia. However, it is understood that The Government of the District of Columbia does not in any way represent that the insurance or the limits of insurance specified herein are sufficient or adequate to protect your interests or liabilities and will not in any way limit the contractor's liability under this contract.

G. CONTRACTOR'S PROPERTY. Contractor and subcontractors are solely responsible for any loss or damage to their personal property, including but not limited to tools and equipment, scaffolding and temporary structures, rented machinery, or owned and leased equipment. A waiver of subrogation shall apply in favor of The Government of the District of Columbia.

H. MEASURE OF PAYMENT. The Government of the District of Columbia shall not make any separate measure or payment for the cost of insurance and bonds. The Contractor shall include all of the costs of insurance and bonds in the contract price.

I. NOTIFICATION. The Contractor shall ensure that all policies provide that the CO shall be given thirty (30) days prior written notice in the event of cancellation, non-renewal, or material changes to the extent such cancellation or material changes results in Contractor no long complying with the above requirements. The Contractor shall provide the CO with ten (10) days prior written notice in the event of non-payment of premium. The Contractor will also provide the CO with an updated Certificate of Insurance should its insurance coverages renew during the contract. The Government of the District of Columbia may reasonably change the above insurance coverage requirements during the Term by giving Contractor at least 30 days' notice of the change. Contractor must comply, at your expense, and deliver to the CO evidence of compliance before the change becomes effective.

J. CERTIFICATES OF INSURANCE. The Contractor must send to CO, at least 10 days after execution of this Agreement, certificates of insurance evidencing the required insurance coverage and endorsements required herein. Contractor must also provide us with evidence of renewal before the expiration date of each insurance policy. Contractor is responsible for providing us with 30 days advanced written notice if the certificate of insurance by the insurer has been canceled, reduced in coverage, or otherwise altered. .

Certificates of insurance must reference the corresponding contract number. Evidence of insurance shall be submitted to:

The Government of the District of Columbia

And mailed to the attention of:
Gena Johnson
400 6th Street, NW
Washington, DC 20001
202-247-6448
Gena.johnson@dc.gov

The CO may request and the Contractor shall promptly deliver updated certificates of insurance, endorsements indicating the required coverages, and/or certified copies of the insurance policies. If the insurance initially obtained by the Contractor expires prior to completion of the contract, renewal certificates of insurance and additional insured and other endorsements shall be furnished to the CO prior to the date of expiration of all such initial insurance. For all coverage required to be maintained after completion, an additional certificate of insurance evidencing such coverage shall be submitted to the CO on an annual basis as the coverage is renewed (or replaced).

K. DISCLOSURE OF INFORMATION. The Contractor agrees that The Government of the District of Columbia may disclose the name and contact information of its insurers to any third party which presents a claim against The Government of the District of Columbia for any damages or claims resulting from or arising out of work performed by the Contractor, its agents, employees, servants or subcontractors in the performance of this contract.

L. CARRIER RATINGS. All Contractor's and its subcontractors' insurance required in connection with this contract shall be written by insurance companies with an A.M. Best Insurance Guide rating of at least A- VII or better (or the equivalent by any other rating agency) and licensed in the District of Columbia.

M. WARRANTIES. When applicable, the Contractor should be named as an additional insured on the applicable manufacturer's/distributer's Commercial General Liability policy using Insurance Services Office, Inc. ("ISO") form CG 20 15 04 13 (or another occurrence-based form with coverage at least as broad). CO should collect, review for accuracy, and maintain all warranties for goods and services.

C.12 PAYMENT – CONTINGENCY FEE *[Net Recovery]*

C.12.1 The Contractor shall assist in the investigation and litigation on a contingency fee basis. The District shall owe the Contractor a contingency fee and cost reimbursement, in accordance with the terms of the Contract, only if the District secures a Gross Recovery, as defined in Paragraph B.4.2.3. The Contractor shall receive a contingency fee in

accordance with the Price Schedule in B.5, which shall be calculated from the Net Recovery as described in Paragraph B.4.2.2.

C.12.2 Contractor understands and agrees that if the District does not realize a monetary recovery, the Contractor shall receive no compensation or cost reimbursement whatsoever from the District.

C.13 PAYMENT PROCESS

C.13.1 In the event the District obtains a monetary recovery whether by judgment, settlement, or any other means, all such funds shall be deposited into the appropriate District of Columbia account.

C.13.2 The District will make payment to the Contractor, into a designated Attorney IOLTA account established prior to any request for payment, after the District's receipt of any monetary recovery from the Contractor's representation of the District in the Matter. If no monetary recovery is realized, the Contractor shall receive no compensation or reimbursement for any costs incurred.

C.13.3 The District will pay the Contractor on or before the 15th day after receiving a proper payment request from the Contractor following the occurrence of the factors outlined in paragraph C.12.1.

C.13.4 The Contractor shall submit a proper payment request as specified below. The payment request shall be submitted to the agency Chief Financial Officer with concurrent copies to the Contract Administrator. The address of the CFO is:

Office of Finance & Resource Management
Office of the Controller/Agency CFO
441 4th Street NW, Suite 890 North
Washington, DC 20001 (202) 727-0333

C.13.5 To constitute a proper payment request, the Contractor shall submit the following information on the payment request:

a) Contractor's name, federal tax ID and payment request date (date payment request as of the date of mailing or transmittal);

b) Contract number and payment request number;

c) Description, price, quantity and the date(s) that the supplies or services were delivered or performed;

d) Other supporting documentation or information, as required by the Contracting Officer;

e) For cost reimbursement, the Contractor must submit an itemized list and description of all costs to be reimbursed and provide receipts to support the cost

expenditures upon request;

f) Bank and Account number of IOLTA account to which payment is to be deposited;

g) Name, title, phone number and mailing address of person (if different from the person identified in C.6.2) to be notified in the event of a defective payment request;

h) A certification that the Contractor is entitled to payment in the requested amount; and

i) Authorized signature.

C.13.6 If OAG and Contractor disagree about the amount of the fee and/or costs owed to the Contractor, the disagreement shall be resolved according to the procedures stated in C.14 Disputes. The parties shall place any disputed amount in escrow pending the resolution of any disagreement relating to the amount of the Contractor's fee and costs and shall distribute all undisputed portions of the total monetary recovery in accordance with paragraph C.13.3.

C.14 DISPUTES

Delete Article 14, Disputes, of the Standard Contract Provisions dated July 2010 for use with District of Columbia Government Supplies and Services Contracts and substitute the following Article 14, Disputes, in its place:

14. DISPUTES (April 2012)

All disputes arising under or relating to the Contract shall be resolved as provided herein.

(a) **Claims by the Contractor against the District**: Claim, as used in paragraph (a) of this clause, means a written assertion by the Contractor seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to the Contract. A claim arising under a contract, unlike a claim relating to that contract, is a claim that can be resolved under a contract clause that provides for the relief sought by the claimant

(1) All claims by a Contractor against the District arising under or relating to a contract shall be in writing and shall be submitted to the CO for a decision. The Contractor's claim shall contain at least the following:

(i) A description of the claim and the amount in dispute;

(ii) Data or other information in support of the claim;

(iii) A brief description of the Contractor's efforts to resolve the dispute prior to filing the claim; and

(iv) The Contractor's request for relief or other action by the CO.

(2) The CO may meet with the Contractor in a further attempt to resolve the claim by agreement.

(3) The CO shall issue a decision on any claim within 120 calendar days after receipt of the claim. Whenever possible, the CO shall take into account factors such as the size and complexity of the claim and the adequacy of the information in support of the claim provided by the Contractor.

(4) The CO's written decision shall do the following:

i. Provide a description of the claim or dispute;
ii. Refer to the pertinent contract terms;
iii. State the factual areas of agreement and disagreement;
iv. State the reasons for the decision, including any specific findings of fact, although specific findings of fact are not required and, if made, shall not be binding in any subsequent proceeding;
v. If all or any part of the claim is determined to be valid, determine the amount of monetary settlement, the contract adjustment to be made, or other relief to be granted;
vi. Indicate that the written document is the CO's final decision; and
vii. Inform the Contractor of the right to seek further redress by appealing the decision to the Contract Appeals Board.

(5) Failure by the CO to issue a decision on a contract claim within 120 days of receipt of the claim will be deemed to be a denial of the claim, and will authorize the commencement of an appeal to the Contract Appeals Board as provided by D.C. Official Code § 2 360.04.

(6) If a contractor is unable to support any part of its claim and it is determined that the inability is attributable to a material misrepresentation of fact or fraud on the part of the Contractor, the Contractor shall be liable to the District for an amount equal to the unsupported part of the claim in addition to all costs to the District attributable to the cost of reviewing that part of the Contractor's claim. Liability under this paragraph (a)(6) shall be determined within six (6) years of the commission of the misrepresentation of fact or fraud.

(7) Pending final decision of an appeal, action, or final settlement, the Contractor shall proceed diligently with performance of the Contract in accordance with the decision of the CO.

(b) **Claims by the District against the Contractor:** Claim as used in paragraph (b) of this clause, means a written demand or written assertion by the

District seeking, as a matter of right, the payment of money in a sum certain, the adjustment of contract terms, or other relief arising under or relating to the Contract. A claim arising under a contract, unlike a claim relating to that contract, is a claim that can be resolved under a contract clause that provides for the relief sought by the claimant.

(1) The CO shall decide all claims by the District against a contractor arising under or relating to a contract.
(2) The CO shall send written notice of the claim to the contractor. The CO's written decision shall do the following:

(i) Provide a description of the claim or dispute;
(ii) Refer to the pertinent contract terms;
(iii) State the factual areas of agreement and disagreement;
(iv) State the reasons for the decision, including any specific findings of fact, although specific findings of fact are not required and, if made, shall not be binding in any subsequent proceeding;
(v) If all or any part of the claim is determined to be valid, determine the amount of monetary settlement, the contract adjustment to be made, or other relief to be granted;
(vi) Indicate that the written document is the CO's final decision; and
(vii) Inform the Contractor of the right to seek further redress by appealing the decision to the Contract Appeals Board.

(3) The CO shall support the decision by reasons and shall inform the Contractor of its rights as provided herein.

(4) Before or after issuing the decision, the CO may meet with the Contractor to attempt to resolve the claim by agreement.

(5) The authority contained in this paragraph (b) shall not apply to a claim or dispute for penalties or forfeitures prescribed by statute or regulation which another District agency is specifically authorized to administer, settle or determine.

(6) This paragraph shall not authorize the CO to settle, compromise, pay, or otherwise adjust any claim involving fraud.

(c) Decisions of the CO shall be final and not subject to review unless the Contractor timely commences an administrative appeal for review of the decision, by filing a complaint with the Contract Appeals Board, as authorized by D.C. Official Code § 2-360.04.

(d) Pending final decision of an appeal, action, or final settlement, the Contractor shall proceed diligently with performance of the Contract in accordance with the decision of the CO.

SUPPLEMENTAL CONTRACT PROVISIONS

TO

STANDARD CONTRACT PROVISIONS FOR USE WITH DISTRICT OF COLUMBIA GOVERNMENT SUPPLIES AND SERVICES CONTRACT DATED JULY 2010

1. THE QUICK PAYMENT ACT

Delete Article 30, The Quick Payment Act, of the Standard Contract Provisions dated July 2010 for use with District of Columbia Government Supplies and Services Contracts and substitute the following Article 30, The Quick Payment Act, in its place:

(a) Interest Penalties to Contractors.

The District will pay interest penalties pursuant to the Quick Payment Act, D.C. Code § 2-221.01 *et seq*. on amounts due to the Contractor.

(b) Payments to Subcontractors.

(1) The Contractor shall comply with the Quick Payment Act with regard to any amount paid to the Contractor by the District for work performed by any subcontractor under the contract.

(2) A dispute between the Contractor and a subcontractor relating to the amount or entitlement of a subcontractor to a payment, or a late payment interest penalty under the Quick Payment Act, does not constitute a dispute to which the District is a party. The District may not be interpleaded in any judicial or administrative proceeding involving such a dispute.

2. RIGHTS IN DATA

Delete Article 42, Rights in Data, of the Standard Contract Provisions dated July 2010 for use with District of Columbia Government Supplies and Services Contracts and substitute the following Article 42, Rights in Data) in its place:

A. Definitions

1. "Products" - A deliverable under any contract that may include commodities, services and/or technology furnished by or through Contractor, including existing and custom Products, such as, but not limited to: a) recorded information, regardless of form or the media on which it may be recorded; b) document research; c) experimental, developmental, or engineering work; d) licensed software; e) components of the hardware environment; f) printed materials (including but not limited to training manuals, system and user documentation, reports, drawings); g) third party software; h) modifications, customizations, custom programs, program listings, programming tools, data, modules, components; and i) any intellectual property embodied therein, whether in tangible or intangible form, including but not limited to utilities, interfaces, templates, subroutines, algorithms, formulas, source code, and object code.

2. "Existing Products" - Tangible Products and intangible licensed Products that exist prior to the commencement of work under the contract. Existing Products must be identified on the Product prior to commencement of work or else will be presumed to be Custom Products.

3. "Custom Products" - Products, preliminary, final or otherwise, which are created or developed by Contractor, its subcontractors, partners, employees, resellers or agents for the District under the contract.

4. "District" – The District of Columbia and its agencies.

B. Title to Project Deliverables

The Contractor acknowledges that it is commissioned by the District to perform services detailed in the contract. The District shall have ownership and rights for the duration set forth in the contract to use, copy, modify, distribute, or adapt Products as follows:

1. Existing Products: Title to all Existing Licensed Product(s), whether or not embedded in, delivered or operating in conjunction with hardware or Custom Products, shall remain with Contractor or third party proprietary owner, who retains all rights, title and interest (including patent, trademark or copyrights). Effective upon payment, the District shall be granted an irrevocable, non-exclusive, worldwide, paid-up license to use, execute, reproduce, display, perform, adapt (unless Contractor advises the District as part of Contractor's bid that adaptation will violate existing agreements or statutes and Contractor demonstrates such to the District's satisfaction), and distribute Existing Product to District users up to the license capacity stated in the contract with all license rights necessary to fully effect the general business purpose of the project or work plan or contract. Licenses shall be granted in the name of the District. The District agrees to reproduce the copyright notice and any other legend of ownership on any copies authorized under this paragraph.

2. Custom Products: Effective upon Product creation, Contractor hereby conveys, assigns, and transfers to the District the sole and exclusive rights, title and interest in Custom Product(s), whether preliminary, final or otherwise, including all patent, trademark and copyrights. Contractor hereby agrees to take all necessary and appropriate steps to ensure that the Custom Products are protected against unauthorized copying, reproduction and marketing by or through Contractor.

C. Transfers or Assignments of Existing or Custom Products by the District

The District may transfer or assign Existing or Custom Products and the licenses thereunder to another District agency. Nothing herein shall preclude the Contractor from otherwise using the related or underlying general knowledge, skills, ideas, concepts, techniques and experience developed under a project or work plan in the course of Contractor's business.

D. Subcontractor Rights

Whenever any data, including computer software, are to be obtained from a subcontractor under the contract, the Contractor shall use this clause, **Rights in Data**, in the subcontract, without alteration, and no other clause shall be used to enlarge or diminish the District's or the Contractor's rights in that subcontractor data or computer software which is required for the District.

E. Source Code Escrow

1. For all computer software furnished to the District with the rights specified in section B.2, the Contractor shall furnish to the District, a copy of the source code with such rights of the scope as specified in section B.2 of this clause. For all computer software furnished to the District with the restricted rights specified in section B.1 of this clause, the District, if the Contractor either

directly or through a successor or affiliate shall cease to provide the maintenance or warranty services provided the District under the contract or any paid-up maintenance agreement, or if the Contractor should be declared insolvent by a court of competent jurisdiction, shall have the right to obtain, for its own and sole use only, a single copy of the current version of the source code supplied under the contract, and a single copy of the documentation associated therewith, upon payment to the person in control of the source code the reasonable cost of making each copy.

2. If the Contractor or Product manufacturer/developer of software furnished to the District with the rights specified in section B.1 of this clause offers the source code or source code escrow to any other commercial customers, the Contractor shall either: (1) provide the District with the source code for the Product; (2) place the source code in a third party escrow arrangement with a designated escrow agent who shall be named and identified to the District, and who shall be directed to release the deposited source code in accordance with a standard escrow arrangement acceptable to the District; or (3) will certify to the District that the Product manufacturer/ developer has named the District as a named beneficiary of an established escrow arrangement with its designated escrow agent who shall be named and identified to the District, and who shall be directed to release the deposited source code in accordance with the terms of escrow.

3. The Contractor shall update the source code, as well as any corrections or enhancements to the source code, for each new release of the Product in the same manner as provided above, and certify such updating of escrow to the District in writing.

F. Indemnification and Limitation of Liability

The Contractor shall indemnify and save and hold harmless the District, its officers, agents and employees acting within the scope of their official duties against any liability, including costs and expenses, (i) for violation of proprietary rights, copyrights, or rights of privacy, arising out of the publication, translation, reproduction, delivery, performance, use or disposition of any data furnished under this contract, or (ii) based upon any data furnished under this contract, or based upon libelous or other unlawful matter contained in such data.

3. DISPUTES

Delete Article 14, Disputes, of the Standard Contract Provisions dated July 2010 for use with District of Columbia Government Supplies and Services Contracts and substitute the following Article 14, Disputes, in its place:

14. Disputes

All disputes arising under or relating to the contract shall be resolved as provided herein.

(a) **Claims by the Contractor against the District**: Claim, as used in paragraph (a) of this clause, means a written assertion by the Contractor seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to the contract. A claim arising under a contract, unlike a claim relating to that contract, is a claim that can be resolved under a contract clause that provides for the relief sought by the claimant

(1) All claims by a Contractor against the District arising under or relating to a contract shall be in writing and shall be submitted to the CO for a decision. The Contractor's claim shall contain at least the following:

(i) A description of the claim and the amount in dispute;
(ii) Data or other information in support of the claim;
(iii) A brief description of the Contractor's efforts to resolve the dispute prior to filing the claim; and
(iii) The Contractor's request for relief or other action by the CO.

(2) The CO may meet with the Contractor in a further attempt to resolve the claim by agreement.

(3) The CO shall issue a decision on any claim within 120 calendar days after receipt of the claim. Whenever possible, the CO shall take into account factors such as the size and complexity of the claim and the adequacy of the information in support of the claim provided by the Contractor.

(4) The CO's written decision shall do the following:

(i) Provide a description of the claim or dispute;
(ii) Refer to the pertinent contract terms;
(iii) State the factual areas of agreement and disagreement;
(iv) State the reasons for the decision, including any specific findings of fact, although specific findings of fact are not required and, if made, shall not be binding in any subsequent proceeding;
(v) If all or any part of the claim is determined to be valid, determine the amount of monetary settlement, the contract adjustment to be made, or other relief to be granted;
(vi) Indicate that the written document is the CO's final decision; and
(vii) Inform the Contractor of the right to seek further redress by appealing the decision to the Contract Appeals Board.

(5) Failure by the CO to issue a decision on a contract claim within 120 days of receipt of the claim will be deemed to be a denial of the claim, and will authorize the commencement of an appeal to the Contract Appeals Board as provided by D.C. Official Code § 2-360.04.

(6) If a contractor is unable to support any part of its claim and it is determined that the inability is attributable to a material misrepresentation of fact or fraud on the part of the Contractor, the Contractor shall be liable to the District for an amount equal to the unsupported part of the claim in addition to all costs to the District attributable to the cost of reviewing that part of the Contractor's claim. Liability under this paragraph (a)(6) shall be determined within six (6) years of the commission of the misrepresentation of fact or fraud.

(7) Pending final decision of an appeal, action, or final settlement, the Contractor shall proceed diligently with performance of the contract in accordance with the decision of the CO.

(b) **Claims by the District against the Contractor:** Claim as used in paragraph (b) of this clause, means a written demand or written assertion by the District seeking, as a matter of right, the payment of money in a sum certain, the adjustment of contract

terms, or other relief arising under or relating to the contract. A claim arising under a contract, unlike a claim relating to that contract, is a claim that can be resolved under a contract clause that provides for the relief sought by the claimant.

(1) The CO shall decide all claims by the District against a contractor arising under or relating to a contract.

(2) The CO shall send written notice of the claim to the contractor. The CO's written decision shall do the following:

(i) Provide a description of the claim or dispute;
(ii) Refer to the pertinent contract terms;
(iii) State the factual areas of agreement and disagreement;
(iv) State the reasons for the decision, including any specific findings of fact, although specific findings of fact are not required and, if made, shall not be binding in any subsequent proceeding;
(v) If all or any part of the claim is determined to be valid, determine the amount of monetary settlement, the contract adjustment to be made, or other relief to be granted;
(vi) Indicate that the written document is the CO's final decision; and
(vii) Inform the Contractor of the right to seek further redress by appealing the decision to the Contract Appeals Board.

(3) The CO shall support the decision by reasons and shall inform the Contractor of its rights as provided herein.

(4) Before or after issuing the decision, the CO may meet with the Contractor to attempt to resolve the claim by agreement.

(5) The authority contained in this paragraph (b) shall not apply to a claim or dispute for penalties or forfeitures prescribed by statute or regulation which another District agency is specifically authorized to administer, settle or determine.

(6) This paragraph shall not authorize the CO to settle, compromise, pay, or otherwise adjust any claim involving fraud.

(c) Decisions of the CO shall be final and not subject to review unless the Contractor timely commences an administrative appeal for review of the decision, by filing a complaint with the Contract Appeals Board, as authorized by D.C. Official Code § 2-360.04.

(d) Pending final decision of an appeal, action, or final settlement, the Contractor shall proceed diligently with performance of the contract in accordance with the decision of the CO.

4. CHANGES

Delete clause 15, Changes, of the Standard Contract Provisions dated July 2010 for use with District of Columbia Government Supplies and Services Contracts and substitute the following clause 15, Changes in its place:

15. Changes:

(a) The CO may, at any time, by written order, and without notice to the surety, if any, make changes in the contract within the general scope hereof. If such change causes an increase or decrease in the cost of performance of the contract, or in the time required for performance, an equitable adjustment shall be made. Any claim for adjustment for a change within the general scope must be asserted within ten (10) days from the date the change is ordered; provided, however, that the CO, if he or she determines that the facts justify such action, may receive, consider, and adjust any such claim asserted at any time prior to the date of final settlement of the contract. If the parties fail to agree upon the adjustment to be made, the dispute shall be determined as provided in **clause 14 Disputes**.

(b) The District shall not require the Contractor, and the Contractor shall not require a subcontractor, to undertake any work that is beyond the original scope of the contract or subcontract, including work under a District-issued change order, when the additional work increases the contract price beyond the not-to-exceed price or negotiated maximum price of the contract, unless the CO:

(1) Agrees with the Contractor, and if applicable the subcontractor, on a price for the additional work;
(2) Obtains a certification of funding to pay for the additional work;
(3) Makes a written, binding commitment with the Contractor to pay for the additional work within thirty (30) days after the Contractor submits a proper invoice; and
(4) Provides the Contractor with written notice of the funding certification.

(c) The Contractor shall include in its subcontracts a clause that requires the Contractor to:

(1) Within five (5) business days of its receipt of notice of the approved additional funding, provide the subcontractor with notice of the amount to be paid to the subcontractor for the additional work to be performed by the subcontractor;
(2) Pay the subcontractor any undisputed amount to which the subcontractor is entitled for the additional work within ten (10) days of receipt of payment from the District; and
(3) Notify the subcontractor and CO in writing of the reason(s) the Contractor withholds any payment from a subcontractor for the additional work.

(d) Neither the District, Contractor, nor any subcontractor may declare another party to be in default, or assess, claim, or pursue damages for delays until the parties agree on a price for the additional work.

5. NON-DISCRIMINATION CLAUSE

Delete clause 19, Non-Discrimination Clause, of the Standard Contract Provisions dated July 2010 for use with District of Columbia Government Supplies and Services Contracts and substitute the following clause 19, Non-Discrimination Clause, in its place:

19. Non-Discrimination Clause:

(a) The Contractor shall not discriminate in any manner against any employee or applicant for employment that would constitute a violation of the District of Columbia Human Rights Act, effective December 13, 1977, as amended (D.C. Law 2-38; D.C. Official Code § 2-1401.01 *et seq.)* ("Act", as used in this clause). The Contractor shall include a similar clause in all subcontracts, except subcontracts for standard commercial supplies or raw materials. In addition, the Contractor agrees, and any subcontractor shall agree, to post in conspicuous places, available to employees and applicants for employment, a notice setting forth the provisions of this non-discrimination clause as provided in section 251 of the Act.

(a) Pursuant to Mayor's Order 85-85, (6/10/85), Mayor's Order 2002-175 (10/23/02), Mayor's Order 2011-155 (9/9/11) and the rules of the Office of Human Rights, Chapter 11 of Title 4 of the D.C. Municipal Regulations, the following clauses apply to the contract:

(1) The Contractor shall not discriminate against any employee or applicant for employment because of actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, family responsibilities, genetic information, disability, matriculation, political affiliation, or credit information. Sexual harassment is a form of sex discrimination which is prohibited by the Act. In addition, harassment based on any of the above protected categories is prohibited by the Act.

(2) The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, family responsibilities, genetic information, disability, matriculation, political affiliation, or credit information. The affirmative action shall include, but not be limited to the following:

(a) employment, upgrading or transfer;
(b) recruitment, or recruitment advertising;
(c) demotion, layoff or termination;
(d) rates of pay, or other forms of compensation; and
(e) selection for training and apprenticeship.

(3) The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting agency, setting forth the provisions in paragraphs 19(b)(1) and (b)(2) concerning non-discrimination and affirmative action.

(4) The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment pursuant to the non-discrimination requirements set forth in paragraph 19(b)(2).

(5) The Contractor agrees to send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the contracting agency, advising the said labor union or workers' representative of that contractor's commitments under this nondiscrimination clause and the Act, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(6) The Contractor agrees to permit access to its books, records, and accounts pertaining to its employment practices, by the Chief Procurement Officer or designee, or the Director of the Office of Human Rights or designee, for purposes of investigation to ascertain compliance with the Act, and to require under terms of any subcontractor agreement each subcontractor to permit access of such subcontractors' books, records, and accounts for such purposes.

(7) The Contractor agrees to comply with the provisions of the Act and with all guidelines for equal employment opportunity applicable in the District adopted by the Director of the Office of Human Rights, or any authorized official.

(8) The Contractor shall include in every subcontract the equal opportunity clauses, i.e., paragraphs 19(b)(1) through (b)(9) of this clause, so that such provisions shall be binding upon each subcontractor.

(9) The Contractor shall take such action with respect to any subcontract as the CO may direct as a means of enforcing these provisions, including sanctions for noncompliance; provided, however, that in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the Contractor may request the District to enter into such litigation to protect the interest of the District.

6. COST AND PRICING DATA

Delete Article 25, Cost and Pricing Data, of the Standard Contract Provisions dated July 2010 for use with District of Columbia Government Supplies and Services Contracts.

GOVERNMENT OF THE DISTRICT OF COLUMBIA

STANDARD CONTRACT PROVISIONS

FOR USE WITH
ON-LINE SOLICITATIONS AND PURCHASE ORDERS ONLY

DISTRICT OF COLUMBIA GOVERNMENT
SUPPLIES AND SERVICES CONTRACTS

July 2010

STANDARD CONTRACT PROVISIONS
(FOR USE WITH ON-LINE SOLICITATIONS ONLY)

1. **Covenant Against Contingent Fees:**

The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure the contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the District will have the right to terminate the contract without liability or in its discretion to deduct from the contract price or consideration or otherwise recover the full amount of the commission, percentage, brokerage, or contingent fee.

2. **Shipping Instructions – Consignment:**

Unless otherwise specified in the Invitation for Bids/Request for Proposals, each case, crate, barrel, package, etc., delivered under this contract must be plainly stencil marked or securely tagged, stating the Contractor's name, contract number and delivery address as noted in the contract. In case of carload lots, the Contractor shall tag the car, stating Contractor's name and contract number. Any failure to comply with these instructions will place the material at the Contractor's risk. Deliveries by rail, water, truck or otherwise, must be within the working hours and in ample time to allow for unloading and if necessary, the storing of the materials or supplies before closing time. Deliveries at any other time will not be accepted unless specific arrangements have been previously made with the contact person identified in the contract at the delivery point.

3. **Patents:**

The Contractor shall hold and save the District, its officers, agents, servants, and employees harmless from liability of any nature or kind, including costs, expenses, for or on account of any patented or unpatented invention, article, process, or appliance, manufactured or used in the performance of this contract, including their use by the District, unless otherwise specifically stipulated in the contract.

4. **Quality:**

Contractor's workmanship shall be of the highest grade, and all materials provided under this contract shall be new, of the best quality and grade, and suitable in every respect for the purpose intended.

5. **Inspection Of Supplies:**

(a) "Supplies" as used in this clause, includes, but is not limited to raw materials, components, intermediate assemblies, end products, and lots of supplies.

(b) The Contractor shall be responsible for the materials or supplies covered by this contract until they are delivered at the designated point, but the Contractor shall bear all risk on rejected materials or supplies after notification of rejection. Upon the Contractor's failure to cure within ten (10) days after date of notification, the District may return the rejected materials or supplies to the Contractor at the Contractor's risk and expense.

(c) The Contractor shall provide and maintain an inspection system acceptable to the District covering supplies under this contract and shall tender to the District for acceptance only supplies that have been inspected in accordance with the inspection system and have been found by the Contractor to be in conformity with contract requirements. As part of the system, the Contractor shall prepare records evidencing all inspections made under the system and the outcome. These records shall be kept complete and made available to the District during contract performance and for as long afterwards as the contract requires. The District may perform reviews and evaluations as reasonably necessary to ascertain compliance with this paragraph. These reviews and evaluations shall be conducted in a manner that will not unduly delay the contract work. The right of review, whether exercised or not, does not relieve the Contractor of the obligations under this contract.

(d) The District has the right to inspect and test all supplies called for by the contract, to the extent practicable, at all places and times, including the period of manufacture, and in any event before acceptance. The District will perform inspections and tests in a manner that will not unduly delay the work. The District assumes no contractual obligation to perform any inspection and test for the benefit of the Contractor unless specifically set forth elsewhere in the contract.

(e) If the District performs inspection or test on the premises of the Contractor or subcontractor, the Contractor shall furnish, and shall require subcontractors to furnish, without additional charge, all reasonable facilities and assistance for the safe and convenient performance of these duties. Except as otherwise provided in the contract, the District will bear the expense of District inspections or tests made at other than Contractor's or subcontractor's premises; provided, that in case of rejection, the District will not be liable for any reduction in the value of inspection or test samples.

(1) When supplies are not ready at the time specified by the Contractor for inspection or test, the Contracting Officer may charge to the Contractor the additional cost of inspection or test.

(2) Contracting Officer may also charge the Contractor for any additional cost of inspection or test when prior rejection makes re-inspection or retest

(f) The District has the right either to reject or to require correction of nonconforming supplies. Supplies are nonconforming when they are defective in material or workmanship or otherwise not in conformity with contract requirements. The District may reject nonconforming supplies with or without disposition instructions.

(g) The Contractor shall remove supplies rejected or required to be corrected. However, the Contracting Officer may require or permit correction in place, promptly after notice, by and at the expense of the Contractor. The Contractor shall not tender for acceptance corrected or rejected supplies without disclosing the former rejection or requirement for correction, and when required, shall disclose the corrective action taken.

(h) If the Contractor fails to remove, replace, or correct rejected supplies that are required to be replaced or corrected within ten (10) days, the District may either (1) by contract or otherwise, remove, replace or correct the supplies and charge the cost to the Contractor or (2) terminate the contract for default. Unless the Contractor

corrects or replaces the supplies within the delivery schedule, the Contracting Officer may require their delivery and make an equitable price reduction. Failure to agree to a price reduction shall be a dispute.

(i) If this contract provides for the performance of District quality assurance at source, and if requested by the District, the Contractor shall furnish advance notification of the time (i) when Contractor inspection or tests will be performed in accordance with the terms and conditions of the contract, and (ii) when the supplies will be ready for District inspection.

(j) The District request shall specify the period and method of the advance notification and the District representative to whom it shall be furnished. Requests shall not require more than 2 business days of advance notification if the District representative is in residence in the Contractor's plant, nor more than 7 business days in other instances.

(k) The District will accept or reject supplies as promptly as practicable after delivery, unless otherwise provided in the contract. District failure to inspect and accept or reject the supplies shall not relieve the Contractor from responsibility, nor impose liability upon the District, for non-conforming supplies.

(l) Inspections and tests by the District do not relieve the Contractor of responsibility for defects or other failures to meet contract requirements discovered before acceptance. Acceptance shall be conclusive, except for latent defects, fraud, gross mistakes amounting to fraud, or as otherwise provided in the contract.

(m) If acceptance is not conclusive for any of the reasons in subparagraph 5(l) hereof, the District, in addition to any other rights and remedies provided by law, or under provisions of this contract, shall have the right to require the Contractor (1) at no increase in contract price, to correct or replace the defective or nonconforming supplies at the original point of delivery or at the Contractor's plant at the Contracting Officer's election, and in accordance with a reasonable delivery schedule as may be agreed upon between the Contractor and the Contracting Officer; provided, that the Contracting Officer may require a reduction in contract price if the Contractor fails to meet such delivery schedule, or (2) within a reasonable time after receipt by the Contractor of notice of defects or noncompliance, to repay such portion of the contract as is equitable under the circumstances if the Contracting Officer elects not to require correction or replacement. When supplies are returned to the Contractor, the Contractor shall bear the transportation cost from the original point of delivery to the Contractor's plant and return to the original point when that point is not the Contractor's plant. If the Contractor fails to perform or act as required in (m)(1) or (m)(2) above and does not cure such failure within a period of 10 days (or such longer period as the Contracting Officer may authorize in writing) after receipt of notice from the Contracting Officer specifying such failure, the District will have the right to return the rejected materials at Contractor's risk and expense or contract or otherwise to replace or correct such supplies and charge to the Contractor the cost occasioned the District thereby.

6. **Inspection Of Services:**

(a) "Services" as used in this clause includes services performed, workmanship, and material furnished or utilized in the performance of services.

(b) The Contractor shall provide and maintain an inspection system acceptable to the District covering the services under this contract. Complete records of all inspection

work performed by the Contractor shall be maintained and made available to the District during contract performance and for as long afterwards as the contract requires.

(c) The District has the right to inspect and test all services called for by the contract, to the extent practicable at all times and places during the term of the contract. The District will perform inspections and tests in a manner that will not unduly delay the work.

(d) If the District performs inspections or tests on the premises of the Contractor or subcontractor, the Contractor shall furnish, without additional charge, all reasonable facilities and assistance for the safety and convenient performance of these duties.

(e) If any of the services do not conform to the contract requirements, the District may require the Contractor to perform these services again in conformity with contract requirements, at no increase in contract amount. When the defects in services cannot be corrected by performance, the District may require the Contractor to take necessary action to ensure that future performance conforms to contract requirements and reduce the contract price to reflect value of services performed.

(f) If the Contractor fails to promptly perform the services again or take the necessary action to ensure future performance in conformity to contract requirements, the District may (1) by contract or otherwise, perform the services and charge the Contractor any cost incurred by the District that is directly related to the performance of such services, or (2) terminate the contract for default.

7. **Waiver:**

The waiver of any breach of the contract will not constitute a waiver of any subsequent breach thereof, or a waiver of the contract.

8. **Default:**

(a) The District may, subject to the provisions of paragraph 8(c) below, by written notice of default to the Contractor, terminate the whole or any part of this contract in any one of the following circumstances:

(1) If the Contractor fails to make delivery of the supplies or to perform the services within the time specified herein or any extension thereof; or

(2) If the Contractor fails to perform any of the other provisions of this contract, or so fails to make progress as to endanger performance of this contract in accordance with its terms, and in either of these two circumstances does not cure such failure within a period of ten (10) days (or such longer period as the Contracting Officer may authorize in writing) after receipt of notice from the Contracting Officer specifying such failure.

(b) In the event the District terminates this contract in whole or in part as provided in paragraph (a) of this clause, the District may procure, upon such terms and in such manner as the Contracting Officer may deem appropriate, supplies or service similar to those so terminated, and the Contractor shall be liable to the District for any excess costs for similar supplies or services; provided, that the Contractor shall

continue the performance of this contract to the extent not terminated under the provisions of this clause.

(c) Except with respect to defaults of subcontractors, the Contractor shall not be liable for any excess costs if the failure to perform the contract arises out of causes beyond the control and without the fault or negligence of the Contractor. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of the District or federal government in either their sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; but in every case the failure to perform must be beyond the control and without fault or negligence of the Contractor. If the failure to perform is caused by the default of the subcontractor, and if such default arises out of causes beyond the control of both the Contractor and the subcontractor, and without the fault or negligence of either of them, the Contractor shall not be liable for any excess cost for failure to perform, unless the supplies or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the Contractor to meet the required delivery schedule.

(d) If this contract is terminated as provided in paragraph 8(a) of this clause, the District, in addition to any other rights provided in this clause, may require the Contractor to transfer title and deliver to the District, in the manner and to the extent directed by the CO, (i) completed supplies, and (ii) such partially completed supplies and materials, parts, tools, dies, jigs, fixtures plans, drawing information, and contract rights (hereinafter called "manufacturing materials") as the Contractor has specifically produced or specifically acquired for the performance of such part of this contract as has been terminated; and the Contractor shall, upon direction of the CO, protect and preserve property in possession of the Contractor in which the District has an interest. Payment for completed supplies delivered to and accepted by the District will be at the contract price. Payment for manufacturing materials delivered to and accepted by the District will be at the contract price. Payment for manufacturing materials delivered to and accepted by the District and for the protection and preservation of property shall be in an amount agreed upon by the Contractor and CO; failure to agree to such amount shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes". The District may withhold from amounts otherwise due the Contractor for such completed supplies or manufacturing materials such sum as the CO determines to be necessary to protect the District against loss because of outstanding liens or claims of former lien holders.

(e) If, after notice of termination of this contract under the provisions of this clause, it is determined for any reason that the Contractor was not in default under the provisions of this clause, or that the default was excusable under the provisions of this clause, the rights and obligations of the parties shall, if the contract contains a clause providing for termination of convenience of the District, be the same as if the notice of termination had been issued pursuant to such clause. See clause 16 **Termination for Convenience of the District.**

(f) The rights and remedies of the District provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

(g) As used in paragraph 8(c) of this clause, the terms "subcontractor(s) means subcontractor(s) at any tier.

9. Indemnification:

The Contractor agrees to defend, indemnify and hold harmless the District, its officers, agencies, departments, agents, and employees (collectively the "District") from and against any and all claims, losses, liabilities, penalties, fines, forfeitures, demands, causes of action, suits, costs and expenses incidental thereto (including cost of defense and attorneys' fees), resulting from, arising out of, or in any way connected to activities or work performed by the Contractor, Contractor's officers, employees, agents, servants, subcontractors, or any other person acting for or by permission of the Contractor in performance of this Contract. The Contractor assumes all risks for direct and indirect damage or injury to the property or persons used or employed in performance of this Contract. The Contractor shall also repair or replace any District property that is damaged by the Contractor, Contractor's officers, employees, agents, servants, subcontractors, or any other person acting for or by permission of the Contractor while performing work hereunder.

The indemnification obligation under this section shall not be limited by the existence of any insurance policy or by any limitation on the amount or type of damages, compensation or benefits payable by or for Contractor or any subcontractor, and shall survive the termination of this Contract. The District agrees to give Contractor written notice of any claim of indemnity under this section. Additionally, Contractor shall have the right and sole authority to control the defense or settlement of such claim, provided that no contribution or action by the District is required in connection with the settlement. Monies due or to become due the Contractor under the contract may be retained by the District as necessary to satisfy any outstanding claim which the District may have against the Contractor.

10. Transfer:

No contract or any interest therein shall be transferred by the parties to whom the award is made unless approved in writing by the contracting officer. Any transfer made without the contracting officer's written approval will be null and void and will be cause to annul the contract.

11. Taxes:

(a) The Government of the District of Columbia is exempt from and will not pay Federal Excise Tax, Transportation Tax, and the District of Columbia Sales and Use Taxes.

(b) Tax exemption certificates are no longer issued by the District for Federal Excise Tax. The following statements may be used by the supplier when claiming tax deductions for Federal Excise Tax exempt items sold to the District:

"The District of Columbia Government is Exempt from Federal Excise Tax – Registration No. 52-73-0206-K, Internal Revenue Service, Baltimore, Maryland."

"The District of Columbia Government is Exempt from Maryland Sales Tax, Registered with the Comptroller of the Treasury as Follows:

a) Deliveries to Glenn Dale Hospital – Exemption No. 4647
b) Deliveries to Children's Center – Exemption No. 4648
c) Deliveries to other District Departments or Agencies – Exemption No. 09339"

"The District of Columbia Government is Exempt from Sales and Use Tax – Registration No. 53-600, The District of Columbia Office of Tax and Revenue."

12. Appointment of Attorney:

(a) The bidder/offeror or contractor (whichever the case may be) does hereby irrevocably designate and appoint the Clerk of the District of Columbia Superior Court and his successor in office as the true and lawful attorney of the Contractor for the purpose of receiving service of all notices and processes issued by any court in the District of Columbia, as well as service of all pleadings and other papers, in relation to any action or legal proceeding arising out of or pertaining to this contract or the work required or performed hereunder.

(b) The bidder/offeror or contractor (whichever the case may be) expressly agrees that the validity of any service upon the said Clerk as herein authorized shall not be affected either by the fact that the contractor was personally within the District of Columbia and otherwise subject to personal service at the time of such service upon the said Clerk or by the fact that the contractor failed to receive a copy of such process, notice or other paper so served upon the said Clerk provided the said Clerk shall have deposited in the United States mail, registered and postage prepaid, a copy of such process, notice, pleading or other paper addressed to the bidder/offeror or contractor at the address stated in this contract.

13. District Employees Not To Benefit:

Unless a determination is made as provided herein, no officer or employee of the District will be admitted to any share or part of this contract or to any benefit that may arise therefrom, and any contract made by the CO or any District employee authorized to execute contracts in which they or an employee of the District will be personally interested shall be void, and no payment shall be made thereon by the District or any officer thereof, but this provision shall not be construed to extend to this contract if made with a corporation for its general benefit. A District employee shall not be a party to a contract with the District and will not knowingly cause or allow a business concern or other organization owned or substantially owned or controlled by the employee to be a party to such a contract, unless a written determination has been made by the head of the procuring agency that there is a compelling reason for contracting with the employee, such as when the District's needs cannot reasonably otherwise be met. (Procurement Practices Act of 1985, D.C. Law 6-85, D.C. Official Code § 2-310.01 *et seq.*, and Chapter 18 of the DC Personnel Regulations)

The Contractor represents and covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of its services hereunder. The Contractor further covenants not to employ any person having such known interests in the performance of the contract.

14. Disputes:

A. All disputes arising under or relating to this contract shall be resolved as provided herein.

B. Claims by a Contractor against the District.

Claim, as used in Section B of this clause, means a written assertion by the Contractor seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to this contract. A claim arising under a contract, unlike a claim relating to that contract, is a claim that can be resolved under a contract clause that provides for the relief sought by the claimant.

(a) All claims by a Contractor against the District arising under or relating to a contract shall be in writing and shall be submitted to the CO for a decision. The contractor's claim shall contain at least the following:

(1) A description of the claim and the amount in dispute;

(2) Any data or other information in support of the claim;

(3) A brief description of the Contractor's efforts to resolve the dispute prior to filing the claim; and

(4) The Contractor's request for relief or other action by the Contracting Officer.

(b) The CO may meet with the Contractor in a further attempt to resolve the claim by agreement.

(c) For any claim of $50,000 or less, the CO shall issue a decision within sixty (60) days from receipt of a written request from a Contractor that a decision be rendered within that period.

(d) For any claim over $50,000, the CO shall issue a decision within ninety (90) days of receipt of the claim. Whenever possible, the CO shall take into account factors such as the size and complexity of the claim and the adequacy of the information in support of the claim provided by the Contractor.

(e) The CO's written decision shall do the following:

(1) Provide a description of the claim or dispute;

(2) Refer to the pertinent contract terms;

(3) State the factual areas of agreement and disagreement;

(4) State the reasons for the decision, including any specific findings of fact, although specific findings of fact are not required and, if made, shall not be binding in any subsequent proceeding;

(5) If all or any part of the claim is determined to be valid, determine the amount of monetary settlement, the contract adjustment to be made, or other relief to be granted;

(6) Indicate that the written document is the CO's final decision; and

(7) Inform the Contractor of the right to seek further redress by appealing the decision to the Contract Appeals Board.

(f) Any failure by the CO to issue a decision on a contract claim within the required time period will be deemed to be a denial of the claim, and will authorize the

commencement of an appeal to the Contract Appeals Board as authorized by D.C. Official Code § 2-309.04.

(g) (1) If a Contractor is unable to support any part of his or her claim and it is determined that the inability is attributable to a material misrepresentation of fact or fraud on the part of the Contractor, the Contractor shall be liable to the District for an amount equal to the unsupported part of the claim in addition to all costs to the District attributable to the cost of reviewing that part of the Contractor's claim.

(2) Liability under paragraph (g)(1) shall be determined within six (6) years of the commission of the misrepresentation of fact or fraud.

(h) The decision of the CO shall be final and not subject to review unless an administrative appeal or action for judicial review is timely commenced by the Contractor as authorized by D.C. Official Code § 2-309.04.

(i) Pending final decision of an appeal, action, or final settlement, a Contractor shall proceed diligently with performance of the contract in accordance with the decision of the CO.

C. Claims by the District against a Contractor

(a) Claim as used in section C of this clause, means a written demand or written assertion by the District seeking, as a matter of right, the payment of money in a sum certain, the adjustment of contract terms, or other relief arising under or relating to this contract. A claim arising under a contract, unlike a claim relating to that contract, is a claim that can be resolved under a contract clause that provides for the relief sought by the claimant.

(b) (1) All claims by the District against a Contractor arising under or relating to a contract shall be decided by the CO.

(2) The CO shall send written notice of the claim to the Contractor. The CO's written decision shall do the following:

(a) Provide a description of the claim or dispute;

(b) Refer to the pertinent contract terms;

(c) State the factual areas of agreement and disagreement;

(d) State the reasons for the decision, including any specific findings of fact, although specific findings of fact are not required and, if made, shall not be binding in any subsequent proceeding;

(e) If all or any part of the claim is determined to be valid, determine the amount of monetary settlement, the contract adjustment to be made, or other relief to be granted;

(f) Indicate that the written document is the CO's final decision; and

(g) Inform the Contractor of the right to seek further redress by appealing the decision to the Contract Appeals Board.

(3) The decision shall be supported by reasons and shall inform the Contractor of its rights as provided herein.

(4) The authority contained in this clause shall not apply to a claim or dispute for penalties or forfeitures prescribed by statute or regulation which another District agency is specifically authorized to administer, settle, or determine.

(5) This clause shall not authorize the CO to settle, compromise, pay, or otherwise adjust any claim involving fraud.

(c) The decision of the CO shall be final and not subject to review unless an administrative appeal or action for judicial review is timely commenced by the Contractor as authorized by D.C. Official Code §2-309.04.

(d) Pending final decision of an appeal, action, or final settlement, the Contractor shall proceed diligently with performance of the contract in accordance with the decision of the CO.

15. Changes:

The CO may, at any time, by written order, and without notice to the surety, if any, make changes in the contract within the general scope hereof. If such change causes an increase or decrease in the cost of performance of this contract, or in the time required for performance, an equitable adjustment shall be made. Any claim for adjustment under this paragraph must be asserted within ten (10) days from the date the change is offered; provided, however, that the CO, if he or she determines that the facts justify such action, may receive, consider and adjust any such claim asserted at any time prior to the date of final settlement of the contract. If the parties fail to agree upon the adjustment to be made, the dispute shall be determined as provided in clause 14 **Disputes**. Nothing in this clause 15 shall excuse the Contractor from proceeding with the contract as changed.

16. Termination for Convenience of the District:

(a) The District may terminate performance of work under this contract in whole or, from time to time, in part if the CO determines that a termination is in the District's interest. The CO shall terminate by delivering to the Contractor a Notice of Termination specifying the extent of termination and effective date.

(b) After receipt of a Notice of Termination, and except as directed by the CO, the Contractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this clause:

(1) Stop work as specified in the notice.

(2) Place no further subcontracts or orders (referred to as subcontracts in this clause) for materials, services, or facilities, except as necessary to complete the continued portion of the contract.

(3) Terminate all contracts to the extent they relate to the work terminated.

(4) Assign to the District, as directed by the CO, all rights, title and interest of the Contractor under the subcontracts terminated, in which case the District

will have the right to settle or pay any termination settlement proposal arising out of those terminations.

(5) With approval or ratification to the extent required by the CO, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts. The approval or ratification will be final for purposes of this clause.

(6) As directed by the CO, transfer title and deliver to the District (i) the fabricated or unfabricated parts, work in process, completed work, supplies, and other materials produced or acquired for the work terminated, and (ii) the completed or partially completed plans, drawings, information, and other property that, if the contract has been completed, would be required to be furnished to the District.

(7) Complete performance of the work not terminated.

(8) Take any action that may be necessary, or that the CO may direct, for the protection and preservation of the property related to this contract that is in the possession of the Contractor and in which the District has or may acquire an interest.

(9) Use its best efforts to sell, as directed or authorized by the CO, any property of the types referred to in subparagraph (6) above; provided, however, that the Contractor (i) is not required to extend credit to any purchaser and (ii) may acquire the property under the conditions prescribed by, and at prices approved by, the CO. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by the District under this contract, credited to the price or cost of the work, or paid in any other manner directed by the CO.

(c) After the expiration of ninety (90) days (or such longer period as may be agreed to) after receipt by the CO of acceptable inventory schedules, the Contractor may submit to the CO a list, certified as to quantity and quality of termination inventory not previously disposed of excluding items authorized for disposition by the CO. The Contractor may request the District to remove those items or enter into an agreement for their storage. Within fifteen (15) days, the District will accept title to those items and remove them or enter into a storage agreement. The CO may verify the list upon removal of the items, or if stored, within forty five (45) days from submission of the list, and shall correct the list, as necessary, before final settlement.

(d) After termination, the Contractor shall submit a final termination settlement proposal to the CO in the form and with the certification prescribed by the CO. The Contractor shall submit the proposal promptly, but no later than one year from the effective date of termination, unless extended in writing by the CO upon written request of the Contractor within this one year period. However, if the CO determines that the facts justify it, a termination settlement proposal may be received and acted on after one year or any extension. If the Contractor fails to submit the proposal within the time allowed, the CO may determine, on the basis of information available, the amount, if any, due to the Contractor because of the termination and shall pay the amount determined.

(e) Subject to paragraph 16(d) above, the Contractor and the CO may agree upon the whole or any part of the amount to be paid because of the termination. The amount may include a reasonable allowance for profit on work done. However, the agreed amount, whether under this paragraph (e) or paragraph 16 (f) below, exclusive of costs shown in subparagraph 16(f)(3), may not exceed the total contract price as reduced by (1) the amount of payment previously made and (2) the contract price of work not terminated. The contract shall be amended, and the Contractor paid the agreed amount. Paragraph 16(f) shall not limit, restrict, or affect the amount that may be agreed upon to be paid under this paragraph 16(e).

(f) If the Contractor and the CO fail to agree on the whole amount to be paid because of the termination work, the CO shall pay the Contractor the amounts determined by the CO as follows, but without duplication of any amounts agreed on under paragraph 16(e) above:

(1) The contract price for completed supplies or services accepted by the District (or sold or acquired under paragraph 16(b)(9) above) not previously paid for, adjusted for any saving of freight and other charges.

(2) The total of :

(i) The costs incurred in the performance of the work terminated, including initial costs and preparatory expense allocable thereto, but excluding any costs attributable to supplies or services paid or to be paid under paragraph16(f)(1) above;

(ii) The cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the contract if not included in paragraph 16(f)(1) above; and

(iii) A sum, as profit on paragraph 16(f)(1) above, determined by the CO to be fair and reasonable; however, if it appears that the Contractor would have sustained a loss on the entire contract had it been completed, the CO shall allow no profit under this subparagraph (iii) and shall reduce the settlement to reflect the indicated rate of loss.

(3) The reasonable cost of settlement of the work terminated, including-

(i) Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;

(ii) The termination and settlement of subcontractors (excluding the amounts of such settlements); and

(iii) Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory.

(g) Except for normal spoilage, and except to the extent that the District expressly assumed the risk of loss, the CO shall exclude from the amounts payable to the Contractor under paragraph 16(f) above, the fair value as determined by the CO, of

property that is destroyed, lost, stolen, or damaged so as to become undeliverable to the District or to a buyer.

(h) The Contractor shall have the right of appeal, under clause 14 **Disputes**, from any determination made by the CO under paragraphs 16(d), (f) or (j), except that if the Contractor failed to submit the termination settlement proposal within the time provided in paragraph 16(d) or (j), and failed to request a time extension, there is no right of appeal. If the CO has made a determination of the amount due under paragraph 16(d), (f) or (j), the District will pay the Contractor (1) the amount determined by the CO if there is no right of appeal or if no timely appeal has been taken, or (2) the amount finally determined on an appeal.

(i) In arriving at the amount due the Contractor under this clause, there shall be deducted:

(1) All unliquidated advances or other payments to the Contractor under the termination portion of the contract;

(2) Any claim which the District has against the Contractor under this contract; and

(3) The agreed price for, or the proceeds of sale of, materials, supplies, or other things acquired by the Contractor or sold under the provisions of this clause and not recovered by or credited to the District.

(j) If the termination is partial, the Contractor may file a proposal with the CO for an equitable adjustment of the price(s) of the continued portion of the contract. The CO shall make any equitable adjustment agreed upon. Any proposal by the Contractor for an equitable adjustment under this clause shall be requested within ninety (90) days from the effective date of termination unless extended in writing by the CO.

(k) (1) The District may, under the terms and conditions it prescribes, make partial payments and payments against costs incurred by the Contractor for the terminated portion of the contract, if the CO believes the total of these payments will not exceed the amount to which the Contractor shall be entitled.

(2) If the total payments exceed the amount finally determined to be due, the Contractor shall repay the excess to the District upon demand together with interest computed at the rate of 10 percent (10%) per year. Interest shall be computed for the period from the date the excess payment is received by the Contractor to the date the excess payment is repaid. Interest shall not be charged on any excess payment due to a reduction in the Contractor's termination settlement proposal because of retention or other disposition of termination inventory until 10 days after the date of the retention or disposition, or a later date determined by the CO because of the circumstances.

(l) Unless otherwise provided in this contract or by statute, the Contractor shall maintain all records and documents relating to the terminated portion of this contract for three (3) years after final settlement. This includes all books and other evidence bearing on the Contractor's costs and expenses under this contract. The Contractor shall make these records and documents available to the District, at the Contractor's office, at all reasonable times, without any direct charge. If approved by the CO, photographs,

micrographs, or other authentic reproductions may be maintained instead of original records and documents.

17. Recovery Of Debts Owed The District:

The Contractor hereby agrees that the District may use all or any portion of any consideration or refund due the Contractor under the present contract to satisfy, in whole or part, any debt due the District.

18. Retention and Examination Of Records:

The Contractor shall establish and maintain books, records, and documents (including electronic storage media) in accordance with generally accepted accounting principles and practices which sufficiently and properly reflect all revenues and expenditures of funds provided by the District under the contract.

The Contractor shall retain all records, financial records, supporting documents, statistical records, and any other documents (including electronic storage media) pertinent to the contract for a period of three (3) years after termination or expiration of the contract, or if an audit has been initiated and audit findings have not been resolved at the end of three (3) years, the records shall be retained until resolution of the audit findings or any litigation which may be based on the terms of the contract.

The Contractor shall assure that these records shall be subject at all reasonable times to inspection, review, or audit by federal, District, or other personnel duly authorized by the CO.

The CO, the Inspector General and the District of Columbia Auditor, or any of their duly authorized representatives shall, until three years after final payment, have the right to examine any directly pertinent books, documents, papers and records of the Contractor involving transactions related to the contract.

19. Non-Discrimination Clause:

(a) The Contractor shall not discriminate in any manner against any employee or applicant for employment that would constitute a violation of the District of Columbia Human Rights Act, approved December 13, 1977, as amended (D. C. Law 2-38; D. C. Official Code §2-1402.11) (2001 Ed.)("Act" as used in this Section). The Contractor shall include a similar clause in all subcontracts, except subcontracts for standard commercial supplies or raw materials. In addition, Contractor agrees and any subcontractor shall agree to post in conspicuous places, available to employees and applicants for employment, notice setting forth the provisions of this non-discrimination clause as provided in Section 251 of the Act.

(b) Pursuant to rules of the Office of Human Rights, published on August 15, 1986 in the D. C. Register, Mayor's Order 2002-175 (10/23/02), 49 DCR 9883 and Mayor's Order 2006-151 (11/17/06), 52 DCR 9351, the following clauses apply to this contract:

(1) The Contractor shall not discriminate against any employee or applicant for employment because of actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, familial status, family responsibilities, disability, matriculation, political affiliation, genetic information, source of income, or place of residence or business. Sexual harassment is a form of sex discrimination which is prohibited

by the Act. In addition, harassment based on any of the above protected categories is prohibited by the Act.

(2) The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, familial status, family responsibilities, disability, matriculation, political affiliation, genetic information, source of income, or place of residence or business.

The affirmative action shall include, but not be limited to the following:

(a) employment, upgrading or transfer;
(b) recruitment, or recruitment advertising;
(c) demotion, layoff, or termination;
(d) rates of pay, or other forms of compensation; and
(e) selection for training and apprenticeship.

(3) The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Contracting Agency, setting forth the provisions in paragraphs 19(b)(1) and (b)(2) concerning non-discrimination and affirmative action.

(4) The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment pursuant to the non-discrimination requirements set forth in paragraph 19(b)(2).

(5) The Contractor agrees to send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the contracting agency, advising the said labor union or workers' representative of that contractor's commitments under this nondiscrimination clause and the Act, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(6) The Contractor agrees to permit access to his books, records and accounts pertaining to its employment practices, by the Chief Procurement Officer or designee, or the Director of Human Rights or designee, for purposes of investigation to ascertain compliance with this chapter, and to require under terms of any subcontractor agreement each subcontractor to permit access of such subcontractors' books, records, and accounts for such purposes.

(7) The Contractor agrees to comply with the provisions of this chapter and with all guidelines for equal employment opportunity applicable in the District of Columbia adopted by the Director of the Office of Human Rights, or any authorized official.

(8) The Contractor shall include in every subcontract the equal opportunity clauses, paragraphs 19(b)(1) through (b)(9) of this section, so that such provisions shall be binding upon each subcontractor or vendor.

(9) The Contractor shall take such action with respect to any subcontract as the Contracting Officer may direct as a means of enforcing these provisions, including sanctions for noncompliance; provided, however, that in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the Contractor may request the District to enter into such litigation to protect the interest of the District.

20. Definitions:

The terms Mayor, Chief Procurement Officer, Contract Appeals Board and District will mean the Mayor of the District of Columbia, the Chief Procurement Officer of the District of Columbia or his/her alternate, the Contract Appeals Board of the District of Columbia, and the Government of the District of Columbia, respectively. If the Contractor is an individual, the term Contractor shall mean the Contractor, his heirs, his executor and his administrator. If the Contractor is a corporation, the term Contractor shall mean the Contractor and its successor.

21. Health and Safety Standards:

Items delivered under this contract shall conform to all requirements of the Occupational Safety and Health Act of 1970, as amended ("OSHA"), and Department of Labor Regulations under OSHA, and all federal requirements in effect at time of bid opening/proposal submission.

22. Appropriation of Funds:

The District's liability under this contract is contingent upon the future availability of appropriated monies with which to make payment for the contract purposes. The legal liability on the part of the District for the payment of any money shall not arise unless and until such appropriation shall have been provided.

23. Buy American Act:

(a) The Buy American Act (41 U.S.C. §10a) provides that the District give preference to domestic end products.

"Components," as used in this clause, means those articles, materials, and supplies incorporated directly into the end products.

"Domestic end product," as used in this clause, means, (1) an unmanufactured end product mined or produced in the United States, or (2) an end product manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States, exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind as the products referred to in paragraphs 23(b)(2) or (3) of this clause shall be treated as domestic. Scrap generated, collected, and prepared for processing in the United States is considered domestic.

"End products," as used in this clause, means those articles, materials, and supplies to be acquired for public use under this contract.

(b) The Contractor shall deliver only domestic end products, except those-

(1) For use outside the United States;

(2) That the District determines are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality;

(3) For which the District determines that domestic preference would be inconsistent with the public interest; or

(4) For which the District determines the cost to be unreasonable.

24. Service Contract Act of 1965:

(a) Definitions. "Act," as used in this clause, means the Service Contract Act of 1965, as amended (41 U.S.C. §351, *et seq.).*

(1) "Contractor," as used in this clause, means the prime contractor or any subcontractor at any tier.

(2) "Service employee," as used in this clause, means any person (other than a person employed in a bona fide executive, administrative, or professional capacity as defined in 29 CFR 541) engaged in performing a District contract not exempted under 41 U.S.C. §356, the principal purpose of which is to furnish services in the United States, as defined in section 22.1001 of the Federal Acquisition Regulations. It includes all such persons regardless of the actual or alleged contractual relationship between them and a contractor.

(b) Applicability. To the extent that the Act applies, this contract is subject to the following provisions and to all other applicable provisions of the Act and regulations of the Secretary of Labor (29 CFR part 4). All interpretations of the Act in Subpart C of 29 CFR 4 are incorporated in this contract by reference. This clause does not apply to contracts or subcontracts administratively exempted by the Secretary of Labor or exempted by 41 U.S.C. §356, as interpreted in Subpart C of 29 CFR 4.

(c) Compensation.

(1) Each service employee employed in the performance of this contract by the Contractor or any subcontractor shall be paid not less than the minimum monetary wages and shall be furnished fringe benefits in accordance with the wages and fringe benefits determined by the Secretary of Labor or the Secretary's authorized representative, as specified in any wage determination attached to this contract.

(2) If a wage determination is attached to this contract, the Contractor shall classify any class of service employees not listed in it, but to be employed under this contract (i.e., the work to be performed is not performed by any classification listed in the wage determination) so as to provide a reasonable relationship (i.e., appropriate level of skill comparison) between such unlisted classifications and the classifications listed in the wage determination. Such conformed class of employees shall be paid the monetary wages and furnished the fringe benefits as are determined pursuant to the procedures in this paragraph. This conforming procedure shall be initiated by the Contractor prior to the performance of contract work by the unlisted class of employee.

(a) The Contractor shall submit Standard Form (SF) 1444, Request for Authorization of Additional Classification and Rate, to the Contracting Officer no later than 30 days after the unlisted class of employee performs any contract work. The Contracting Officer shall review the proposed classification and rate and promptly submit the completed SF 1444 (which must include information regarding the agreement or disagreement of the employees' authorized representatives or the employees themselves together with the agency recommendation), and all pertinent information to the Wage and Hour Division, Employment Standards Administration (ESA), Department of Labor. The Wage and Hour Division will approve, modify, or disapprove the action or render a final determination in the event of disagreement within 30 days of receipt or will notify the Contracting Officer within 30 days of receipt that additional time is necessary;

(b) The final determination of the conformance action by the Wage and Hour Division shall be transmitted to the Contracting Officer who shall promptly notify the Contractor of the action taken. Each affected employee shall be furnished by the Contracting Officer with a written copy of such determination or it shall be posted as a part of the wage determination;

(c) The process of establishing wage and fringe benefit rates that bear a reasonable relationship to those listed in a wage determination cannot be reduced to any single formula. The approach used may vary from wage determination to wage determination depending on the circumstances. Standard wage and salary administration practices which rank various job classifications by pay grade pursuant to point schemes or other job factors may, for example, be relied upon. Guidance may also be obtained from the way different jobs are rated under Federal pay systems (Federal Wage Board Pay System and the General Schedule) or from other wage determinations issued in the same locality. Basic to the establishment of any conformable wage rate(s) is the concept that a pay relationship should be maintained between job classifications based on the skill required and the duties performed;

(d) In the case of a contract modification, an exercise of an option, or extension of an existing contract, or in any other case where a Contractor succeeds to a contract under which the classification in question was previously conformed pursuant to this clause, a new conformed wage rate and fringe benefits may be assigned to the conformed classification by indexing (*i.e.*, adjusting) the previous conformed rate and fringe benefits by an amount equal to the average (mean) percentage increase (or decrease, where appropriate) between the wages and fringe benefits specified for all classifications to be used on the contract which are listed in the current wage determination, and those specified for the corresponding classifications in the previously applicable wage determination. Where conforming actions are accomplished in accordance with this paragraph prior to the performance of contract work by the unlisted class of employees, the Contractor shall advise the

Contracting Officer of the action taken but the other procedures in this clause need not be followed;

(e) No employee engaged in performing work on this contract shall in any event be paid less than the currently applicable minimum wage specified under section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended;

(f) The wage rate and fringe benefits finally determined under this clause shall be paid to all employees performing in the classification from the first day on which contract work is performed by them in the classification. Failure to pay the unlisted employees the compensation agreed upon by the interested parties or finally determined by the Wage and Hour Division retroactive to the date such class of employees commenced contract work shall be a violation of the Act and this contract;

(g) Upon discovery of failure to comply with this clause, the Wage and Hour Division shall make a final determination of conformed classification, wage rate, and/or fringe benefits which shall be retroactive to the date such class or classes of employees commenced contract work.

(3) If the term of this contract is more than 1 year, the minimum wages and fringe benefits required for service employees under this contract shall be subject to adjustment after 1 year and not less often than once every 2 years, under wage determinations issued by ESA.

(4) The Contractor can discharge the obligation to furnish fringe benefits specified in the attachment or determined under paragraph 23(c)(2) of this clause by furnishing any equivalent combinations of bona fide fringe benefits, or by making equivalent or differential cash payments, in accordance with Subpart B and C of 29 CFR 4.

(d) Minimum wage: In the absence of a minimum wage attachment for this contract, the Contractor shall not pay any service or other employees performing this contract less than the minimum wage specified by section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. §206). Nothing in this clause shall relieve the Contractor of any other legal or contractual obligation to pay a higher wage to any employee.

(e) Successor contracts: If this contract succeeds a contract subject to the Act under which substantially the same services were furnished and service employees were paid wages and fringe benefits provided for in a collective bargaining agreement, then, in the absence of a minimum wage attachment to this contract, the Contractor may not pay any service employee performing this contract less than the wages and benefits, including those accrued and any prospective increases, provided for under that agreement. No Contractor may be relieved of this obligation unless the limitations of 29 CFR 4.1c(b) apply or unless the Secretary of Labor or the Secretary's authorized representative:

(1) Determines that the agreement under the predecessor was not the result of arms-length negotiations; or

(2) Finds, after a hearing under 29 CFR 4.10, that the wages and benefits provided for by that agreement vary substantially from those prevailing for similar services in the locality or determines, as provided in 29 CFR 4.11, that the collective bargaining agreement applicable to service employees employed under the predecessor contract was not entered into as a result of arm's length negotiations. Where it is found in accordance with the review procedures provided in 29 CFR 4.10 and 4.11 and parts 6 and 8 that some or all of the wages and fringe benefits contained in a predecessor Contractor's collective bargaining agreement are substantially at variance with those which prevail for services of a character similar in the locality, and that the collective bargaining agreement applicable to service employees employed under the predecessor contract was not entered into as a result of arm's length negotiations, the Department will issue a new or revised wage determination setting forth the applicable wage rates and fringe benefits. Such determination shall be made part of the contract or subcontract, in accordance with the decision of the Administrator, the Administrative Law Judge, or the Board of Service Contract Appeals, as the case may be, irrespective of whether such issuance occurs prior to or after the award of a contract or subcontract (53 Comp. Gen. 401 (1973)). In the case of a wage determination issued solely as a result of a finding of substantial variance, such determination shall be effective as of the date of the final administrative decision.

(f) Notification to employees: The Contractor shall notify each service employee commencing work on this contract of a minimum wage and any fringe benefits required to be paid, or shall post a notice of these wages and benefits in a prominent and accessible place at the worksite, using such poster as may be provided by the Department of Labor.

(g) Safe and sanitary working conditions: The Contractor shall not permit services called for by this contract to be performed in buildings or surroundings or under working conditions provided by or under the control or supervision of the Contractor that are unsanitary, hazardous, or dangerous to the health or safety of service employees. The Contractor shall comply with the health standards applied under 29 CFR Part 1925.

(h) Records: The Contractor shall maintain for 3 years from the completion of work, and make available for inspection and transcription by authorized ESA representatives, a record of the following:

(1) For each employee subject to the Act:

(a) Name and address;
(b) Work classification or classifications, rate or rates of wages and fringe benefits provided, rate or rates of payments in lieu of fringe benefits, and total daily and weekly compensation;
(c) Daily and weekly hours worked; and
(d) Any deductions, rebates, or refunds from total daily or weekly compensation.

(2) For those classes of service employees not included in any wage determination attached to this contract, wage rates or fringe benefits determined by the interested parties or by ESA under the terms of paragraph 23(c)(3) of this clause. A copy of the report required by paragraph (l) of this clause will fulfill this requirement.

(3) Any list of the predecessor Contractor's employees which had been furnished to the Contractor as prescribed by this clause. The Contractor shall also make available a copy of this contract for inspection or transcription by authorized representatives of the Wage and Hour Division. Failure to make and maintain or to make available these records for inspection and transcription shall be a violation of the regulations and this contract, and in the case of failure to produce these records, the Contracting Officer, upon direction of the Department of Labor and notification to the Contractor, shall take action to cause suspension of any further payment or advance of funds until the violation ceases. The Contractor shall permit authorized representatives of the Wage and Hour Division to conduct interviews with employees at the worksite during normal working hours.

(i) Pay periods: The Contractor shall unconditionally pay to each employee subject to the Act all wages due free and clear and without subsequent deduction (except as otherwise provided by law or regulations, 29 CFR part 4), rebate, or kickback on any account. These payments shall be made no later than one pay period following the end of the regular pay period in which the wages were earned or accrued. A pay period under this Act may not be of any duration longer than semi-monthly.

(j) Withholding of payments and termination of contract: The Contracting Officer shall withhold from the prime Contractor under this or any other District contract with the prime contractor any sums the Contracting Officer, or an appropriate officer of the Labor Department, decides may be necessary to pay underpaid employees. In the event of failure to pay any employees subject to the Act all or part of the wages or fringe benefits due under the Act, the Contracting Officer may, after authorization or by direction of the Department of Labor and written notification to the Contractor, take action to cause suspension of any further payment or advance of funds until such violations have ceased. Additionally, any failure to comply with the requirements of this clause may be grounds for termination for default. In such event, the District may enter into other contracts or arrangements for completion of the work, charging the Contractor in default with any additional cost.

(k) Subcontracts: The Contractor agrees to insert this clause in all subcontracts.

(l) Contractor's report:

(1) If there is a wage determination attachment to this contract and any classes of service employees not listed on it are to be employed under the contract, the Contractor shall report promptly to the Contracting Officer the wages to be paid and the fringe benefits to be provided each of these classes, when determined under paragraph 23(c) of this clause.

(2) If wages to be paid or fringe benefits to be furnished any service employees under the contract are covered in a collective bargaining agreement effective at any time when the contract is being performed, the Contractor shall provide to the Contracting Officer a copy of the agreement and full information on the application and accrual of wages and benefits (including any prospective increases) to service employees working on the contract. The Contractor shall report when contract performance begins, in the case of agreements then in

effect, and shall report subsequently effective agreements, provisions, or amendments promptly after they are negotiated.

(m) Contractor's Certification: By entering into this contract, the Contractor (and officials thereof) certifies that neither it (nor he or she) nor any person or firm who has a substantial interest in the Contractor's firm is a person or firm ineligible to be awarded District contracts by virtue of the sanctions imposed under section 5 of the Act. No part of this contract shall be subcontracted to any person or firm ineligible for award of a District contract under section 5 of the Act. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. §1001.

(n) Variations, tolerances, and exemptions involving employment: Notwithstanding any of the provisions in paragraphs 23(c) through (l) of this clause, the following employees may be employed in accordance with the following variations, tolerances, and exemptions authorized by the Secretary of Labor.

(1)(i) In accordance with regulations issued under Section 14 of the Fair Labor Standards Act of 1938 by the Administrator of the Wage and Hour Division, ESA (29 CFR 520, 521, 524, and 525), apprentices, student learners, and workers whose earning capacity is impaired by age or by physical or mental deficiency or injury, may be employed at wages lower than the minimum wages otherwise required by section 2(a)(1) or 2(b)(1) of the Service Contract Act, without diminishing any fringe benefits or payments in lieu of these benefits required under section 2(a)(2) of the Act.

(ii) The Administrator will issue certificates under the Act for employing apprentices, student-learners, handicapped persons, or handicapped clients of sheltered workshops not subject to the Fair Labor Standards Act of 1938, or subject to different minimum rates of pay under the two acts, authorizing appropriate rates of minimum wages, but without changing requirements concerning fringe benefits or supplementary cash payments in lieu of these benefits.

(iii) The Administrator may also withdraw, annul, or cancel such certificates under 29 CFR 525 and 528.

(2) An employee engaged in an occupation in which the employee customarily and regularly receives more than $30 a month in tips shall be credited by the employer against the minimum wage required by section 2(a)(1) or section 2(b)(1) of the Act, in accordance with regulations in 29 CFR 531. However, the amount of credit shall not exceed 40 percent of the minimum rate specified in section 6(a)(1) of the Fair Labor Standards Act of 1938 as amended.

25. Cost and Pricing Data:

(a) This paragraph and paragraphs 25(b) through (e) below shall apply to contractors or offerors in regards to: (1) any procurement in excess of $100,000, (2) any contract awarded through competitive sealed proposals, (3) any contract awarded through sole source procurement, or (4) any change order or contract modification. By entering into this contract or submitting this offer, the Contractor or offeror certifies that, to the best of the Contractor's or offeror's knowledge and belief, any cost and

pricing data submitted was accurate, complete and current as of the date specified in the contract or offer.

(b) Unless otherwise provided in the solicitation, the offeror or Contractor shall, before entering into any contract awarded through competitive sealed proposals or through sole source procurement or before negotiating any price adjustments pursuant to a change order or modification, submit cost or pricing data and certification that, to the best of the Contractor's knowledge and belief, the cost or pricing data submitted was accurate, complete, and current as of the date of award of this contract or as of the date of negotiation of the change order or modification.

(c) If any price, including profit or fee, negotiated in connection with this contract, or any cost reimbursable under this contract, was increased by any significant amount because (1) the Contractor or a subcontractor furnished cost or pricing data that were not complete, accurate, and current as certified by the Contractor, (2) a subcontractor or prospective subcontractor furnished the Contractor cost or pricing data that were not complete, accurate, and current as certified by the Contractor, or (3) any of these parties furnished data of any description that were not accurate, the price or cost shall be reduced accordingly and the contract shall be modified to reflect the reduction.

(d) Any reduction in the contract price under paragraph 25(c) above due to defective data from a prospective subcontractor that was not subsequently awarded, the subcontract shall be limited to the amount, plus applicable overhead and profit markup, by which (1) the actual subcontract or (2) the actual cost to the Contractor, if there was no subcontract, was less than the prospective subcontract cost estimate submitted by the Contractor; provided that the actual subcontract price was not itself affected by defective cost or pricing data.

(e) Cost or pricing data includes all facts as of the time of price agreement that prudent buyers and sellers would reasonably expect to affect price negotiations significantly. Cost or pricing data are factual, not judgmental, and are therefore verifiable. While they do not indicate the accuracy of the prospective Contractor's judgment about estimated future costs or projections, cost or pricing data do include the data forming the basis for that judgment. Cost or pricing data are more than historical accounting data; they are all the facts that can be reasonably expected to contribute to the soundness of estimates of future costs and to the validity of determinations of costs already incurred.

(f) The following specific information should be included as cost or pricing data, as applicable:

(1) Vendor quotations;
(2) Nonrecurring costs;
(3) Information on changes in production methods or purchasing volume;
(4) Data supporting projections of business prospects and objectives and related operations costs;
(5) Unit – cost trends such as those associated with labor efficiency;
(6) Make or buy decisions;
(7) Estimated resources to attain business goals;
(8) Information on management decisions that could have a significant bearing on costs.

(g) If the offeror or contractor is required by law to submit cost or pricing data in connection with pricing this contract or any change order or modification of this contract, the Contracting Officer or representatives of the Contracting Officer shall have the right to examine all books, records, documents and other data of the Contractor (including computations and projections) related to negotiating, pricing, or performing the contract, change order or modification, in order to evaluate the accuracy, completeness, and currency of the cost or pricing data. The right of examination shall extend to all documents necessary to permit adequate evaluation of the cost or pricing data submitted, along with the computations and projections used. Contractor shall make available at its office at all reasonable times the materials described above for examination, audit, or reproduction until three years after the later of:

(1) final payment under the contract;
(2) final termination settlement; or
(3) the final disposition of any appeals under the disputes clause or of litigation or the settlement of claims arising under or relating to the contract.

26. Multivear Contracts:

(a) A multiyear contract shall not be binding or give rise to any claim or demand against the District until approved by the Council of the District of Columbia and signed by the CO.

(b) If funds are not appropriated or otherwise made available for the continued performance in a subsequent year of a multiyear contract, the contract for the subsequent year shall be terminated, either automatically or in accordance with the termination clause of the contract. Unless otherwise provided for in the contract, the effect of termination is to discharge both the District and the Contractor from future performance of the contract, but not from the existing obligations. The Contractor shall be reimbursed for the reasonable value of any non-recurring costs incurred but not amortized in the price of the supplies or services delivered under the contract.

27. Termination of Contracts for Certain Crimes and Violations:

(a) The District may terminate without liability any contract and may deduct from the contract price or otherwise recover the full amount of any fee, commission, percentage, gift, or consideration paid if:

(1) The Contractor has been convicted of a crime arising out of or in connection with the procurement of any work to be done or any payment to be made under the contract; or

(2) There has been any breach or violation of:

(A) Any provision of the Procurement Practices Act of 1985, as amended, or
(B) The contract provision against contingent fees.

(b) If a contract is terminated pursuant to this section, the Contractor:

(1) May be paid only the actual costs of the work performed to the date of termination, plus termination costs, if any; and

(2) Shall refund all profits or fixed fees realized under the Contract.

(c) The rights and remedies contained in this are in addition to any other right or remedy provided by law, and the exercise of any of them is not a waiver of any other right or remedy provided by law.

28. Invoice Payment:

(a) The District will make payments to the Contractor, upon the submission of proper invoices, at the prices stipulated in this contract, for supplies delivered and accepted or services performed and accepted, less any discounts, allowances or adjustments provided for in this contract.

(b) The District will pay the Contractor on or before the 30th day after receiving a proper invoice from the Contractor.

(c) To constitute a proper invoice, the Contractor shall submit the following information on the invoice:

(1) Contractor's name, federal tax ID and invoice date (date invoices as of the date of mailing or transmittal);
(2) Contract number and invoice number;
(3) Description, price, quantity and the date(s) that the supplies or services were delivered or performed;
(4) Other supporting documentation or information, as required by the Contracting Officer;
(5) Name, title, telephone number and complete mailing address of the responsible official to whom payment is to be sent;
(6) Name, title, phone number of person preparing the invoice;
(7) Name, title, phone number and mailing address of person (if different from the person identified in 28(c)(6) above) to be notified in the event of a defective invoice; and
(8) Authorized signature.

(d) For contracts subject to the 51% District Residents New Hires Requirements and First Source Employment Agreement requirements, final request for payment must be accompanied by the report or a waiver of compliance required in paragraph 35(e) of clause 35 **51% District Residents New Hires Requirements and First Source Employment Agreement.**

(e) No final payment shall be made to the Contractor until the agency CFO has received the Contracting Officer's final determination or approval of waiver of the Contractor's compliance with 51% District Residents New Hires Requirements and First Source Employment Agreement requirements.

29. Assignment of Contract Payments:

(a) In accordance with 27 DCMR 3250, the Contractor may assign to a bank, trust company, or other financing institution funds due or to become due as a result of the performance of this contract.

(b) Any assignment shall cover all unpaid amounts payable under this contract, and shall not be made to more than one party.

(c) Notwithstanding an assignment of contract payments, the Contractor, not the assignee, is required to prepare invoices. Where such an assignment has been made, the original copy of the invoice must refer to the assignment and must show that payment of the invoice is to be made directly to the assignee as follows:

"Pursuant to the instrument of assignment dated _____, make payment of this invoice to (name and address of assignee)."

30. The Quick Payment Act:

(a) Interest Penalties to Contractors

(1) The District will pay interest penalties on amounts due to the Contractor under the Quick Payment Act, D.C. Official Code §2-221.01 *et seq.*, for the period beginning on the day after the required payment date and ending on the date on which payment of the amount is made. Interest shall be calculated at the rate of 1% per month. No interest penalty shall be paid if payment for the completed delivery of the item of property or service is made on or before:

(a) the 3rd day after the required payment date for meat or a meat product;
(b) the 5th day after the required payment date for an agricultural commodity; or
(c) the 15th day after the required payment date for any other item.

(2) Any amount of an interest penalty which remains unpaid at the end of any 30-day period shall be added to the principal amount of the debt and thereafter interest penalties shall accrue on the added amount.

(b) Payments to Subcontractors

(1) The Contractor must take one of the following actions within seven (7) days of receipt of any amount paid to the Contractor by the District for work performed by any subcontractor under this contract:

(a) Pay the subcontractor for the proportionate share of the total payment received from the District that is attributable to the subcontractor for work performed under the contract; or
(b) Notify the District and the subcontractor, in writing, of the Contractor's intention to withhold all or part of the subcontractor's payment and state the reason for the nonpayment.

(2) The Contractor must pay any subcontractor or supplier interest penalties on amounts due to the subcontractor or supplier beginning on the day after the payment is due and ending on the date on which the payment is made. Interest shall be calculated at the rate of 1% per month. No interest penalty shall be paid on the following if payment for the completed delivery of the item of property or service is made on or before:

(a) the 3rd day after the required payment date for meat or a meat product;
(b) the 5th day after the required payment date for an agricultural commodity; or
(c) the 15th day after the required payment date for any other item.

(3) Any amount of an interest penalty which remains unpaid by the Contractor at the end of any 30-day period shall be added to the principal amount of the debt to the subcontractor and thereafter interest penalties shall accrue on the added amount.

(4) A dispute between the Contractor and subcontractor relating to the amounts or entitlement of a subcontractor to a payment or a late payment interest penalty under the Quick Payment Act does not constitute a dispute to which the District of Columbia is a party. The District of Columbia may not be interpleaded in any judicial or administrative proceeding involving such a dispute.

(c) **Subcontract requirements**

The Contractor shall include in each subcontract under this contract a provision requiring the subcontractor to include in its contract with any lower-tier subcontractor or supplier the payment and interest clauses required under paragraphs (1) and (2) of D.C. Official Code §2-221.02(d).

31. Authorized Changes by the Contracting Officer (CO):

(a) The CO is the only person authorized to approve changes in any of the requirements of this contract.

(b) The Contractor shall not comply with any order, directive or request that changes or modifies the requirements of this contract, unless issued in writing and signed by the CO.

(c) In the event the Contractor effects any change at the instruction or request of any person other than the CO, the change will be considered to have been made without authority and no adjustment will be made in the contract price to cover any cost increase incurred as a result thereof.

32. Contract Administrator (CA):

(a) The CA is responsible for general administration of the contract and advising the CO as to the Contractor's compliance or noncompliance with the contract. The CA has the responsibility of ensuring the work conforms to the requirements of the contract and such other responsibilities and authorities as may be specified in the contract. These include:

(1) Keeping the CO fully informed of any technical or contractual difficulties encountered during the performance period and advising the CO of any potential problem areas under the contract;

(2) Coordinating site entry for Contractor personnel, if applicable;

(3) Reviewing invoices for completed work and recommending approval by the CO if the Contractor's costs are consistent with the negotiated amounts and progress is satisfactory and commensurate with the rate of expenditure;

(4) Reviewing and approving invoices for deliverables to ensure receipt of goods and services. This includes the timely processing of invoices and vouchers in accordance with the District's payment provisions; and

(5) Maintaining a file that includes all contract correspondence, modifications, records of inspections (site, data, equipment) and invoice or vouchers.

(b) The CA shall NOT have the authority to:

(1) Award, agree to, or sign any contract, delivery order or task order. Only the CO shall make contractual agreements, commitments or modifications;

(2) Grant deviations from or waive any of the terms and conditions of the contract;

(3) Increase the dollar limit of the contract or authorize work beyond the dollar limit of the contract,

(4) Authorize the expenditure of funds by the Contractor;

(5) Change the period of performance; or

(6) Authorize the use of District property, except as specified under the contract.

(c) The Contractor will be fully responsible for any changes not authorized in advance, in writing, by the CO; may be denied compensation or other relief for any additional work performed that is not so authorized; and may also be required, at no additional cost to the District, to take all corrective action necessitated by reason of the unauthorized changes.

33. Publicity:

The Contractor shall at all times obtain the prior written approval from the CO before it, any of its officers, agents, employees or subcontractors, either during or after expiration or termination of the contract, make any statement, or issue any material, for publication through any medium of communication, bearing on the work performed or data collected under this contract.

34. Freedom of Information Act:

The District of Columbia Freedom of Information Act, at D.C. Official Code §2-532 (a-3), requires the District to make available for inspection and copying any record produced or collected pursuant to a District contract with a private contractor to perform a public function, to the same extent as if the record were maintained by the agency on whose behalf the contract is made. If the Contractor receives a request for such information, the Contractor shall immediately send the request to the CA who will provide the request to the FOIA Officer for the agency with programmatic responsibility in accordance with the D.C. Freedom of Information Act. If the agency with programmatic responsibility receives a request for a record maintained by the Contractor pursuant to the contract, the CA will forward a copy to the Contractor. In either event, the Contractor is required by law to provide all responsive records to the CA within the timeframe designated by the CA. The FOIA Officer for the agency with programmatic responsibility will determine the releasability of the records. The District will reimburse the Contractor for the costs of searching and copying the records in accordance with D.C. Official Code §2-532 and Chapter 4 of Title 1 of the *D.C. Municipal Regulations*.

35. 51% District Residents New Hires Requirements and First Source Employment Agreement:

(a) The Contractor shall comply with the First Source Employment Agreement Act of 1984, as amended, D.C. Official Code §2-219.01 *et seq.* ("First Source Act").

(b) The Contractor shall enter into and maintain, during the term of the contract, a First Source Employment Agreement with DOES, in which the Contractor shall agree that:

(1) The first source for finding employees to fill all jobs created in order to perform this contract shall be the DOES; and

(2) The first source for finding employees to fill any vacancy occurring in all jobs covered by the First Source Employment Agreement shall be the First Source Register.

(c) The Contractor shall submit to DOES, no later than the 10th of each month following execution of the contract, a First Source Agreement Contract Compliance Report ("contract compliance report") to verify its compliance with the First Source Agreement for the preceding month. The contract compliance report for the contract shall include the:

(1) Number of employees needed;
(2) Number of current employees transferred;
(3) Number of new job openings created;
(4) Number of job openings listed with DOES;
(5) Total number of all District residents hired for the reporting period and the cumulative total number of District residents hired; and
(6) Total number of all employees hired for the reporting period and the cumulative total number of employees hired, including:
    (a) Name;
    (b) Social security number;
    (c) Job title;
    (d) Hire date;
    (e) Residence; and
    (f) Referral source for all new hires.

(d) If the contract amount is equal to or greater than $100,000, the Contractor agrees that 51% of the new employees hired for the contract shall be District residents.

(e) With the submission of the Contractor's final request for payment from the District, the Contractor shall:

(1) Document in a report to the CO its compliance with section 35(d) of this clause; or

(2) Submit a request to the CO for a waiver of compliance with section 35(d) of this clause and include the following documentation:

    (a) Material supporting a good faith effort to comply;
    (b) Referrals provided by DOES and other referral sources;
    (c) Advertisement of job openings listed with DOES and other referral sources; and
    (d) Any documentation supporting the waiver request pursuant to section 35(f) of this clause.

(f) The CO may waive the provisions of section 35(d) of this clause if the CO finds that:

(1) A good faith effort to comply is demonstrated by the Contractor;

(2) The Contractor is located outside the Washington Standard Metropolitan Statistical Area and none of the contract work is performed inside the Washington Standard Metropolitan Statistical Area which includes the District of Columbia; the Virginia Cities of Alexandria, Falls Church, Manassas, Manassas Park, Fairfax, and Fredericksburg, the Virginia Counties of Fairfax, Arlington, Prince William, Loudoun, Stafford, Clarke, Warren, Fauquier, Culpeper, Spotsylvania, and King George; the Maryland Counties of Montgomery, Prince Georges, Charles, Frederick, and Calvert; and the West Virginia Counties of Berkeley and Jefferson.

(3) The Contractor enters into a special workforce development training or placement arrangement with DOES; or

(4) DOES certifies that there are insufficient numbers of District residents in the labor market possessing the skills required by the positions created as a result of the contract.

(g) Upon receipt of the contractor's final payment request and related documentation pursuant to sections 35(e) and 35(f) of this clause, the CO shall determine whether the Contractor is in compliance with section 35(d) or whether a waiver of compliance pursuant to section 35(f) is justified. If the CO determines that the Contractor is in compliance, or that a waiver of compliance is justified, the CO shall, within two business days of making the determination forward a copy of the determination to the agency Chief Financial Officer and the CA.

(h) Willful breach of the First Source Employment Agreement, or failure to submit the report pursuant to section 35(e) of this clause, or deliberate submission of falsified data, may be enforced by the CO through imposition of penalties, including monetary fines of 5% of the total amount of the direct and indirect labor costs of the contract. The Contractor shall make payment to DOES. The Contractor may appeal to the D.C. Contract Appeals Board as provided in this contract any decision of the CO pursuant to this section 35(h).

(i) The provisions of sections 35(d) through 35(h) of this clause do not apply to nonprofit organizations.

36. Section 504 of the Rehabilitation Act of 1973, as amended:

During the performance of the contract, the Contractor and any of its subcontractors shall comply with Section 504 of the Rehabilitation Act of 1973, as amended. This Act prohibits discrimination against disabled people in federally funded programs and activities. See 29 U.S.C. § 794 *et seq.*

37. Americans With Disabilities Act of 1990 (ADA):

During the performance of this contract, the Contractor and any of its subcontractors shall comply with the ADA. The ADA makes it unlawful to discriminate in employment against a qualified individual with a disability. See 42 U.S.C. §12101 *et seq.*

38. Way to Work Amendment Act of 2006:

(a) Except as described in section 38(h) of this clause, the Contractor shall comply with Title I of the Way to Work Amendment Act of 2006, effective June 8, 2006 (D.C. Law 16-118, D.C. Official Code §2-220.01 *et seq.*) ("Living Wage Act of 2006"), for contracts for services in the amount of $100,000 or more in a 12-month period.

(b) The Contractor shall pay its employees and subcontractors who perform services under the contract no less than the current living wage published on the OCP website at www.ocp.dc.gov.

(c) The Contractor shall include in any subcontract for $15,000 or more a provision requiring the subcontractor to pay its employees who perform services under the contract no less than the current living wage rate.

(d) The DOES may adjust the living wage annually and the OCP will publish the current living wage rate on its website at www.ocp.dc.gov.

(e) The Contractor shall provide a copy of the Fact Sheet attached to the contract to each employee and subcontractor who performs services under the contract. The Contractor shall also post the Notice attached to the contract in a conspicuous place in its place of business. The Contractor shall include in any subcontract for $15,000 or more a provision requiring the subcontractor to post the Notice in a conspicuous place in its place of business.

(f) The Contractor shall maintain its payroll records under the contract in the regular course of business for a period of at least three (3) years from the payroll date, and shall include this requirement in its subcontracts for $15,000 or more under the contract.

(g) The payment of wages required under the Living Wage Act of 2006 shall be consistent with and subject to the provisions of D.C. Official Code §32-1301 *et seq.*

(h) The requirements of the Living Wage Act of 2006 do not apply to:

(1) Contracts or other agreements that are subject to higher wage level determinations required by federal law;

(2) Existing and future collective bargaining agreements, provided, that the future collective bargaining agreement results in the employee being paid no less than the established living wage;

(3) Contracts for electricity, telephone, water, sewer or other services provided by a regulated utility;

(4) Contracts for services needed immediately to prevent or respond to a disaster or eminent threat to public health or safety declared by the Mayor;

(5) Contracts or other agreements that provide trainees with additional services including, but not limited to, case management and job readiness services; provided that the trainees do not replace employees subject to the Living Wage Act of 2006;

(6) An employee under 22 years of age employed during a school vacation period, or enrolled as a full-time student, as defined by the respective institution, who is in high school or at an accredited institution of higher education and who works less than 25 hours per week; provided that he or she does not replace employees subject to the Living Wage Act of 2006;

(7) Tenants or retail establishments that occupy property constructed or improved by receipt of government assistance from the District of Columbia; provided, that the tenant or retail establishment did not receive direct government assistance from the District;

(8) Employees of nonprofit organizations that employ not more than 50 individuals and qualify for taxation exemption pursuant to section 501(c)(3) of the Internal Revenue Code of 1954, approved August 16, 1954 (68A Stat. 163; 26 U.S.C. § 501(c)(3));

(9) Medicaid provider agreements for direct care services to Medicaid recipients, provided, that the direct care service is not provided through a home care agency, a community residence facility, or a group home for mentally retarded persons as those terms are defined in section 2 of the Health-Care and Community Residence Facility, Hospice, and Home Care Licensure Act of 1983, effective February 24, 1984 (D.C. Law 5-48; D.C. Official Code § 44-501); and

(10) Contracts or other agreements between managed care organizations and the Health Care Safety Net Administration or the Medicaid Assistance Administration to provide health services.

(i) The Mayor may exempt a contractor from the requirements of the Living Wage Act of 2006, subject to the approval of Council, in accordance with the provisions of Section 109 of the Living Wage Act of 2006.

39. Contracts that Cross Fiscal Years:

Continuation of this contract beyond the current fiscal year is contingent upon future fiscal appropriations.

40. Confidentiality of Information:

The Contractor shall keep all information relating to any employee or customer of the District in absolute confidence and shall not use the information in connection with any other matters; nor shall it disclose any such information to any other person, firm or corporation, in accordance with the District and federal laws governing the confidentiality of records.

41. Time:

Time, if stated in a number of days, will include Saturdays, Sundays and holidays, unless otherwise stated herein.

42. Rights in Data:

(a) "Data," as used herein, means recorded information, regardless of form or the media on which it may be recorded. The term includes technical data and computer software. The term does not include information incidental to contract administration, such as financial, administrative, cost or pricing, or management information.

(b) The term "Technical Data", as used herein, means recorded information, regardless of form or characteristic, of a scientific or technical nature. It may, for example, document research, experimental, developmental or engineering work, or be usable or used to define a design or process or to procure, produce, support, maintain, or operate material. The data may be graphic or pictorial delineations in media such as drawings or photographs, text in specifications or related performance or design type documents or computer printouts. Examples of technical data include research and engineering data, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information, and computer software documentation. Technical data does not include computer software or financial, administrative, cost and pricing, and management data or other information incidental to contract administration.

(c) The term "Computer Software", as used herein means computer programs and computer databases. "Computer Programs", as used herein means a series of instructions or statements in a form acceptable to a computer, designed to cause the computer to execute an

operation or operations. "Computer Programs" include operating systems, assemblers, compilers, interpreters, data management systems, utility programs, sort merge programs, and automated data processing equipment maintenance diagnostic programs, as well as applications programs such as payroll, inventory control and engineering analysis programs. Computer programs may be either machine-dependent or machine-independent, and may be general purpose in nature or designed to satisfy the requirements of a particular user.

(d) The term "computer databases", as used herein, means a collection of data in a form capable of being processed and operated on by a computer.

(e) All data first produced in the performance of this Contract shall be the sole property of the District. The Contractor hereby acknowledges that all data, including, without limitation, computer program codes, produced by Contractor for the District under this Contract, are works made for hire and are the sole property of the District; but, to the extent any such data may not, by operation of law, be works made for hire, Contractor hereby transfers and assigns to the District the ownership of copyright in such works, whether published or unpublished. The Contractor agrees to give the District all assistance reasonably necessary to perfect such rights including, but not limited to, the works and supporting documentation and the execution of any instrument required to register copyrights. The Contractor agrees not to assert any rights in common law or in equity in such data. The Contractor shall not publish or reproduce such data in whole or in part or in any manner or form, or authorize others to do so, without written consent of the District until such time as the District may have released such data to the public.

(f) The District will have restricted rights in data, including computer software and all accompanying documentation, manuals and instructional materials, listed or described in a license or agreement made a part of this contract, which the parties have agreed will be furnished with restricted rights, provided however, notwithstanding any contrary provision in any such license or agreement, such restricted rights shall include, as a minimum the right to:

(1) Use the computer software and all accompanying documentation and manuals or instructional materials with the computer for which or with which it was acquired, including use at any District installation to which the computer may be transferred by the District;

(2) Use the computer software and all accompanying documentation and manuals or instructional materials with a backup computer if the computer for which or with which it was acquired is inoperative;

(3) Copy computer programs for safekeeping (archives) or backup purposes; and modify the computer software and all accompanying documentation and manuals or instructional materials, or combine it with other software, subject to the provision that the modified portions shall remain subject to these restrictions.

(g) The restricted rights set forth in section 42(f) of this clause are of no effect unless

(1) the data is marked by the Contractor with the following legend:

"RESTRICTED RIGHTS LEGEND

Use, duplication, or disclosure is subject to restrictions stated in Contract No._____with (Contractor's Name)", and

(2) If the data is computer software, the related computer software documentation includes a prominent statement of the restrictions applicable to the computer software. The Contractor may not place any legend on the computer software indicating restrictions on the District's rights in such software unless the restrictions are set forth in a license or agreement made a part of the contract prior to the delivery date of the software. Failure of the Contractor to apply a restricted rights legend to such computer software shall relieve the District of liability with respect to such unmarked software.

(h) In addition to the rights granted in section 42(f) of this clause, the Contractor hereby grants to the District a nonexclusive, paid-up license throughout the world, of the same scope as restricted rights set forth in section 42(f) of this clause, under any copyright owned by the Contractor, in any work of authorship prepared for or acquired by the District under this contract. Unless written approval of the Contracting Officer is obtained, the Contractor shall not include in technical data or computer software prepared for or acquired by the District under this contract any works of authorship in which copyright is not owned by the Contractor without acquiring for the District any rights necessary to perfect a copyright license of the scope specified in the first sentence of this paragraph.

(i) Whenever any data, including computer software, are to be obtained from a subcontractor under this contract, the Contractor shall use this clause 42, **Rights in Data**, in the subcontract, without alteration, and no other clause shall be used to enlarge or diminish the District's or the Contractor's rights in that subcontractor data or computer software which is required for the District.

(j) For all computer software furnished to the District with the rights specified in section 42(e), the Contractor shall furnish to the District, a copy of the source code with such rights of the scope specified in section 42(e) of this clause. For all computer software furnished to the District with the restricted rights specified in section 42(f), the District, if the Contractor, either directly or through a successor or affiliate shall cease to provide the maintenance or warranty services provided the District under this contract or any paid-up maintenance agreement, or if Contractor should be declared bankrupt or insolvent by a court of competent jurisdiction, shall have the right to obtain, for its own and sole use only, a single copy of the then current version of the source code supplied under this contract, and a single copy of the documentation associated therewith, upon payment to the person in control of the source code the reasonable cost of making each copy.

(k) The Contractor shall indemnify and save and hold harmless the District, its officers, agents and employees acting within the scope of their official duties against any liability, including costs and expenses, (i) for violation of proprietary rights, copyrights, or rights of privacy, arising out of the publication, translation, reproduction, delivery, performance, use or disposition of any data furnished under this contract, or (ii) based upon any data furnished under this contract, or based upon libelous or other unlawful matter contained in such data.

(l) Nothing contained in this clause shall imply a license to the District under any patent, or be construed as affecting the scope of any license or other right otherwise granted to the District under any patent.

(m) Sections 42(f), 42(g), 42(h), 42(k) and 42(l) of this clause are not applicable to material furnished to the Contractor by the District and incorporated in the work furnished under contract, provided that such incorporated material is identified by the Contractor at the time of delivery of such work.

43. Other Contractors:

The Contractor shall not commit or permit any act that will interfere with the performance of work by another District contractor or by any District employee.

44. Subcontracts:

The Contractor hereunder shall not subcontract any of the Contractor's work or services to any subcontractor without the prior written consent of the CO. Any work or service so subcontracted shall be performed pursuant to a subcontract agreement, which the District will have the right to review and approve prior to its execution by the Contractor. Any such subcontract shall specify that the Contractor and the subcontractor shall be subject to every provision of this contract. Notwithstanding any such subcontract approved by the District, the Contractor shall remain liable to the District for all Contractor's work and services required hereunder.

45. Subcontracting Requirements:

(a) Mandatory Subcontracting Requirements

(1) Unless a waiver was granted, for all contracts in excess of $250,000, at least 35% of the dollar volume shall be subcontracted to certified small business enterprises; provided, however, that the costs of materials, goods, and supplies shall not be counted towards the 35% subcontracting requirement unless such materials, goods and supplies are purchased from certified small business enterprises.

(2) If there are insufficient qualified small business enterprises to completely fulfill the requirement of section 45(a)(1) of this clause, then the subcontracting may be satisfied by subcontracting 35% of the dollar volume to any certified business enterprises; provided, however, that all reasonable efforts shall be made to ensure that qualified small business enterprises are significant participants in the overall subcontracting work.

(3) A prime contractor which is certified as a small, local or disadvantaged business enterprise shall not be required to comply with the provisions of sections 45(a)(1) and 45(a)(2) of this clause.

(b) Subcontracting Plan

If the prime contractor is required by law to subcontract under this contract, it must subcontract at least 35% of the dollar volume of this contract in accordance with the provisions of section 45(a) of this clause. The prime contractor responding to this solicitation which is required to subcontract shall be required to submit with its proposal, a notarized statement detailing its subcontracting plan. Proposals responding to this RFP shall be deemed nonresponsive and shall be rejected if the offeror is required to subcontract, but fails to submit a subcontracting plan with its proposal. Once the plan is approved by the CO, changes to the plan will only occur with the prior written approval of the CO and the Director of DSLBD. Each subcontracting plan shall include the following:

(1) A description of the goods and services to be provided by SBEs or, if insufficient qualified SBEs are available, by any certified business enterprises;

(2) A statement of the dollar value of the bid that pertains to the subcontracts to be performed by the SBEs or, if insufficient qualified SBEs are available, by any certified business enterprises;

(3) The names and addresses of all proposed subcontractors who are SBEs or, if insufficient SBEs are available, who are certified business enterprises;

(4) The name of the individual employed by the prime contractor who will administer the subcontracting plan, and a description of the duties of the individual;

(5) A description of the efforts the prime contractor will make to ensure that SBEs, or, if insufficient SBEs are available, that certified business enterprises will have an equitable opportunity to compete for subcontracts;

(6) In all subcontracts that offer further subcontracting opportunities, assurances that the prime contractor will include a statement, approved by the contracting officer, that the subcontractor will adopt a subcontracting plan similar to the subcontracting plan required by the contract;

(7) Assurances that the prime contractor will cooperate in any studies or surveys that may be required by the contracting officer, and submit periodic reports, as requested by the contracting officer, to allow the District to determine the extent of compliance by the prime contractor with the subcontracting plan;

(8) A list of the type of records the prime contractor will maintain to demonstrate procedures adopted to comply with the requirements set forth in the subcontracting plan, and assurances that the prime contractor will make such records available for review upon the District's request; and

(9) A description of the prime contractor's recent effort to locate SBEs or, if insufficient SBEs are available, certified business enterprises, and to award subcontracts to them.

(c) Subcontracting Plan Compliance Reporting.

If the Contractor has an approved subcontracting plan required by law under this contract, the Contractor shall submit to the CO and the Director of DSLBD, no later than the 21st of each month following execution of the contract, a Subcontracting Plan Compliance Report to verify its compliance with the subcontracting requirements for the preceding month. The monthly subcontracting plan compliance report shall include the following information:

(1) The dollar amount of the contract or procurement;

(2) A brief description of the goods procured or the services contracted for;

(3) The name of the business enterprise from which the goods were procured or services contracted;

(4) Whether the subcontractors to the contract are currently certified business enterprises;

(5) The dollar percentage of the contract awarded to SBEs, or if insufficient SBEs, to other certified business enterprises;

(6) A description of the activities the Contractor engaged in, in order to achieve the subcontracting requirements set forth in its plan; and

(7) A description of any changes to the activities the Contractor intends to make by the next month to achieve the requirements set forth in its plan.

(d) Enforcement and Penalties for Breach of Subcontracting Plan

(1) If during the performance of this contract, the Contractor fails to comply with its approved subcontracting plan, and the CO determines the Contractor's failure to be a

material breach of the contract, the CO shall have cause to terminate the contract under the default provisions at clause 8 **Default** hereof.

(2) There shall be a rebuttable presumption that a contractor willfully breached its approved subcontracting plan if the contractor (i) fails to submit any required monitoring or compliance report; or (ii) submits a monitoring or compliance report with the intent to defraud.

(3) A contractor that is found to have willfully breached its approved subcontracting plan for utilization of certified business enterprises in the performance of a contract shall be subject to the imposition of penalties, including monetary fines of $15,000 or 5% of the total amount of the work that the contractor was to subcontract to certified business enterprises, whichever is greater, for each such breach.

46. Equal Employment Opportunity:

In accordance with the District of Columbia Administrative Issuance System, Mayor's Order 85-85 dated June 10, 1985, the forms for completion of the Equal Employment Opportunity Information Report are incorporated in the contract. An award cannot be made to any offeror who has not satisfied the equal employment requirements.

47. Contracts in Excess of One Millions Dollars:

Any contract in excess of $1,000,000 shall not be binding or give rise to any claim or demand against the District until approved by the Council of the District of Columbia and signed by the CO.

48. Governing Law:

This contract, and any disputes arising out of or related to this contract, shall be governed by, and construed in accordance with, the laws of the District of Columbia.

1. ETHICAL OBLIGATIONS AND LEGAL CONFLICTS OF INTEREST

1.1 An attorney-client relationship will exist between the District and any attorney who performs work under the Contract, as well as between the District and the firm of any attorney who performs work under the Contract. The D.C. Rules of Professional Conduct (RPC) and the ethical rules of any other jurisdiction in which work is performed are binding on the Contractor. The parties agree that the District may have a contractual cause of action based on violation of such rules, in addition to any other remedies available.

1.2 In addition to the prohibitions contained in the RPC and the ethical rules of any other jurisdiction in which work is performed, the Contractor agrees that it shall recognize that in the performance of the Contract it may receive certain information submitted to the District government on a proprietary basis by third parties, information which relates to potential or actual claims against the District government, or information which relates to matters in dispute or litigation. Unless the District consents to a particular disclosure, the Contractor shall use such information exclusively in the performance of the Contract and shall forever hold inviolate and protect from disclosure all such information, except disclosures required by applicable law or court order. The Contractor also agrees that, to the extent it is permitted to disclose such information, it will make such disclosures only to those individuals who need to know such information in order to perform required tasks in their official capacity and will restrict access to such information to such individuals.

1.3 Before any contractor can be retained to perform legal services under the Contract, on behalf of the District government, the Attorney General for the District of Columbia must review and waive all actual or potential direct and indirect conflicts of interest pursuant to RPC 1.6, 1.7, 1.8, 1.9 and 1.10. Contractor shall provide the Attorney General with the following: (1) a written statement that there exists no Rule 1.7(a) direct conflict of interest regarding the work to be performed under the Contract; (2) a written description of all actual or potential conflicts of interest regarding the work to be performed under the Contract that require waiver pursuant to Rule 1.7(b) because the contractor represents another client in a matter adverse to any of the following: (i) the District government agency or instrumentality to be represented under the Contract; (ii) the District government as a whole; or (iii) any other agency or instrumentality of the District government (for this purpose, under D.C. Bar Legal Ethics Committee Opinion No. 268, a representation of a private client against a discrete government agency or instrumentality can have government-wide implications and thus constitute a representation adverse to the government as a whole pursuant to the RPC); and (3) a written description of all representations of clients who are or will be adverse to the District government with regard to the work to be performed under the Contract, whether or not such representations are related to the matter for which the work is to be performed under the Contract.

1.4 The Attorney General generally does not grant prospective conflict of interest waivers, except in certain *pro bono* matters. Thus, in addition to the prohibitions contained in the RPC and the ethical rules of any other jurisdiction in which work is performed under the Contract, without the consent of the Attorney General, the Contractor shall not represent any party other than the District in any disputes, negotiations, proceedings or litigation adverse to any agency or instrumentality of the District government or the District government as a whole, including, but not limited to, matters related to the work to be performed under the Contract. The Contractor shall notify the Attorney General immediately, in writing, of any potential conflicts of interest (as defined in the RPC) that arise during the period that the Contractor is performing work under the Contract. The Attorney General makes every attempt to be reasonable in deciding whether or not to consent to a conflict of interest and usually makes this decision promptly after receiving notice and sufficient information regarding the conflict. If the Attorney General does not waive a conflict of interest, the Contractor shall undertake immediate action to eliminate the source of any such conflict of interest.

1.5 Before any contractor can be retained pursuant to the Contract, the Attorney General for the District of Columbia must review all actual, direct and potential conflicts of interest on behalf of the District government in light of D.C. Bar Rules of Professional Conduct ("RPC") 1.6, 1.7, 1.8, 1.9 and 1.10. Contractor shall provide the Attorney General with written notice of all actual or potential direct and indirect conflicts of interest in which the Contractor represents (or may represent) another client with interests adverse to the District government agency to be represented as well as against the District government as a whole. For this purpose, under D.C. Bar Legal Ethics Committee Opinion No. 268, (http://app.ocp.dc.gov/pdf/DCEB-2018-R-0001__ATTT2.pdf), a representation of a private client against a discrete government agency can have government-wide implications and thus qualify under the RPC as being against the government as a whole, including the individual agency that the private firm represents. In that situation, the private firm would be required to notify the Attorney General of the existence of a conflict under RPC 1.7 and obtain consent to such representation and waiver of the conflict. The Attorney General makes every attempt to be reasonable in deciding whether or not to consent to a conflict and usually makes this decision promptly after receiving notice of the conflict.

Ethics Opinion 268

Conflict of Interest Issues Where Private Lawyers Provide Volunteer Legal Assistance to the D.C. Corporation Counsel; Reconsideration of Opinion 92

Under the D.C. Rules of Professional Conduct, a lawyer may give volunteer legal assistance to the D.C. Corporation Counsel and continue simultaneously to represent private clients against the City and its agencies, as long as the requirements of Rule 1.7 are met. Under Rule 1.7(b)(1), a lawyer who wishes to represent a private client against the same City government client that she is representing while working for the Corporation Counsel on an unrelated matter, may do so if she obtains the informed consent of both her private client and her City government client. Similarly, the lawyer may agree to volunteer her services t o represent the same City government client that she or her firm are opposing on behalf of a private client in an unrelated matter, if both clients consent after full disclosure. Client notification and consent are not required, however, where the lawyer is not opposing her own City government client but some other agency of the City that is not her client.

The City government client is not always the City as a whole, but may be more narrowly defined as one of the City's constituent agencies. The identity of the government client for conflict of interest purposes will be established in the first instance between the lawyer and responsible government officials in accordance with the general precepts of client autonomy embodied in Rule 1.2. In agreeing to undertake a particular representation, the lawyer must take steps to recognize and respect the reasonable expectation of her other clients, protected by Rule 1.7, that they will receive a conflict-free representation.

Even if Rule 1.7(b)(1) does not apply, because the lawyer's government client is not considered the same government entity she is opposing on behalf of private parties, Rule 1.7(b)(2)-(4) may require that the lawyer obtain client consent if her representation of one client will be or is likely to be "adversely affected" by her representation of the other, or if the independence of her professional judgment will be or is likely to be adversely affected by her responsibilities to third parties or by her own personal interests.

Applicable Rules

- Rule 1.2 (Scope of Representation)
- Rule 1.7 (Conflict of Interest: General Rule)

Inquiry

The Committee has been asked to reconsider several conclusions of D.C. Bar Opinion 92 (1980) ("Propriety of Private Attorneys Handling Municipal Cases on a Pro Bono Basis"). Opinion 92 examined the ethical propriety, under the D.C. Code of Professional Responsibility, of a program in which "private attorneys acting on a pro bono basis would assist the City in managing its severely crowded civil docket."[1] (/bar-resources/legal-ethics/opinions/opinion268.cfm#footnote1) The Committee opined in Opinion 92 that the program would be ethically permissible as long as certain conditions were met. The inquirer has asked the Committee to reconsider the continuing validity of two of those conditions, given the intervening adoption in 1991 of the D.C. Rules of Professional Conduct.[2] (/bar-resources/legal-ethics/opinions/opinion268.cfm#footnote2) The two conditions in question are as follows:

1. A lawyer or firm performing volunteer representational work for the City or any of its agencies may simultaneously represent a private party against the City or any of its agencies only with full disclosure to and consent of both the City and the private party; and.
2. Under no circumstances may a lawyer or firm volunteer to represent a particular agency of the City government while at the same time handling a private matter involving the same agency, or another matter that is or appears to be "closely related," even with client consent.

Summary of Conclusions

For reasons discussed more fully in Part I below, the Committee believes that the conclusion in paragraph 2 above is no longer mandated under the Rules of Professional Conduct. Thus a lawyer may represent a particular City government agency in a matter at the same time she is opposing that agency on behalf of a private client in an unrelated matter, as long as she makes full disclosure to and obtains the consent of both the City government agency and the private client. *See* Rule 1.7(b)(1) and 1.7(c). Moreover, as explained in Part II below, we disagree with the assumption of Opinion 92 that the entire City and all of its constituent agencies must always and necessarily be considered the lawyer's client for conflict of interest purposes. Thus, a lawyer may under certain circumstances perform services for a particular City agency client without having to notify and obtain the consent of private clients that she is representing against another City agency that is not considered the same client. Nevertheless, even if Rule 1.7(b)(1) does not apply because the lawyer is not opposing her own client, she may be required by Rule 1.7(b)(2)-(4) to notify and seek the consent of one or both clients if her representation of one would substantially interfere with her representation of the other, or if her independent judgment in either client's behalf would be adversely affected by her responsibilities to a third party or by her own personal interests.

Discussion

I. Prohibited Representation of Private Parties Against Particular City Agencies or in Particular Matters

Opinion 92 imposed an absolute prohibition against a lawyer's representing a private party against the same particular City agency for which she is performing volunteer services, or in a matter "closely related" to the one she is handling for the City. This absolute prohibition was derived from the "appearance of impropriety" standard of Canon 9 rather than the "conflict of interest" rules of Canon 5. The "appearance" standard was dropped entirely from the Rules of Professional Conduct, and the conflict of interest rules provide that conflicts may generally be waived by the client. *See* Rule 1.7(b) and (c). Under the current rules, the only conflict that cannot be relieved by client consent is the one that arises where a lawyer seeks to take "adverse" positions on behalf of two different clients *in the same matter*. *See* Rule 1.7(a). We therefore conclude that the absolute prohibition on opposing one's own City agency client set forth in paragraph 2 above is no longer applicable.

While a conflict under Rule 1.7(b)(1) would arise if the volunteer lawyer attempted to represent a private client against the City in one matter at the same time she (or one of her partners) was representing the City for the Corporation Counsel in another matter, since the lawyer would in effect be opposing her own client, that conflict could in most circumstances be cured by making full disclosure to both affected clients and obtaining their consent. Thus, a lawyer may represent a private party against a City government agency while simultaneously representing that same City agency in an unrelated matter, as long as both the private client and the agency client are informed of the existence and nature of the lawyer's conflict and do not object to the continued representation. *See* Rule 1.7(b)(1) & (c). *See also* Rule 1.7(b)(2)-(4). A lawyer may not, however, represent both the City and a private client in the same matter if they are adverse to each other in that matter, even if both clients consent. *See* Rule 1.7(a).

The fact that the lawyer is volunteering her services to the City, as opposed to serving under a paid retainer, is irrelevant to these conclusions, as it is to the conclusions reached in the remainder of this opinion.

II. Conflicts of Interest Where Volunteer Services Are Performed for the City or One of Its Agencies

We now address the holding of Opinion 92 based on the then-applicable conflict of interest rules, described in numbered paragraph 1 above. Opinion 92 construed the conflict of interest provisions of the former Code, derived from Canon 5, to permit a lawyer to participate in the Corporation Counsel's volunteer program "notwithstanding his or her involvement in other matters affecting the City," as long as two conditions were met: first, it must be "obvious" that the lawyer can adequately represent "both the interests of the City and his or her other private clients;" and, second, "each affected client must consent to the multiple representation after full disclosure."

A. Defining the Client for Conflict of Interest Purposes

Before turning to an analysis of how the current conflict of interest rules apply in this situation, we must deal with one important threshold issue, involving an unexamined assumption made by the drafters of Opinion 92 about the identity of the City government client. That assumption is that the client of the volunteer lawyer working for the Corporation Counsel is always and necessarily "the City" as a whole rather than one or more of the City's constituent agencies.[3] (/bar-resources/legal-ethics/opinions/opinion268.cfm#footnote3) This definition of the government client gives the conflict rules a considerably broader application and effect than they would have if the City government client were more narrowly defined. Under Rule 1.7(b)(1), a lawyer may not take a position in a matter on behalf of one client that is adverse to a position taken in the same matter by another client (not represented by her) unless she obtains consent from both clients.[4] (/bar-resources/legal-ethics/opinions/opinion268.cfm#footnote4) If the client of the volunteer lawyer is the City as a whole, as opposed to one or more of its constituent agencies, Rule 1.7(b)(1) would require the lawyer to obtain consent to the City representation from each and every one of the private clients that she is currently representing against the City or any of its agencies, and from the City to each and every adverse private representation the lawyer may currently be involved in against it or any of its agencies, without regard to whether there is any real possibility that the substantive concerns animating the conflicts rules are implicated.[5] (/bar-resources/legal-ethics/opinions/opinion268.cfm#footnote5)

Concerned that the breadth of this definition of the City government client will effectively discourage, if not preclude, private law firms from volunteering to assist the Corporation Counsel, the inquirer has asked the Committee to consider whether the volunteer lawyer's client may be defined as a particular City agency as opposed to the City as a whole, so as to ameliorate the sweeping requirement of notice and consent imposed by Rule 1.7(b)(1) read in the light of Opinion 92. We agree with the inquirer that the definition of the City government client contained in Opinion 92 is too broad, and that the City government client may sometimes be defined as narrowly as a single agency. As discussed more fully below, we also believe that the identity of the City government client depends upon a number of discrete considerations and must be decided on a case-by-case basis.

Simply as a matter of common sense it seems apparent that the client of the volunteer lawyer will not always be the entire City, but may sometimes be a smaller part of it. Much like a large modern corporation, the District of Columbia government is a complex and many-faceted entity that sometimes acts through its individual constituent parts (like the subsidiaries of a corporation) and sometimes acts as a single entity, depending upon the particular facts and circumstances. Sometimes a legal matter or issue is relevant only to a single City agency and is of no substantial interest to other agencies or the City as a whole. Sometimes a matter or issue directly affects or is otherwise significant to a number of agencies or the overall City government. In some situations the broad set of interests at stake will be apparent at the outset; in others the broader concerns may emerge during the course of the representation.

Whatever general principles about client identity in the government context can be drawn from our common sense analysis of the governmental interests implicated by particular cases, at bottom

the identity of the City government client (like the identity of the corporate client) is not primarily a question of legal ethics. The identity of the government (or corporate) client for all ethical purposes is established in the first instance between the lawyer and responsible public (or corporate) officials in accordance with the general precepts of client autonomy embodied in Rule 1.2.[6] (/bar-resources/legal-ethics/opinions/opinion268.cfm#footnote6) Cf. ABA Formal Opinion 95-390 ("Conflicts of 6 Interest in the Corporate Family Context") (a corporate client may specify, when engaging a lawyer, whether or not "the corporate client expects some or all of its affiliates to be treated as clients for purposes of Rule 1.7").

The ethics rules provide at least one important limitation on what a lawyer can agree to with a client under Rule 1.2, and that is her other clients' right to be protected from conflicts of interest under Rule 1.7. In agreeing to represent a particular government client, a lawyer must take into account the countervailing rights of her other clients whose interests may be adversely affected by this new representation to know of and object to it—just as she must consider the similar rights of the new government client to know of and be able to object to any conflicting existing representations. In working with officials who are authorized to speak for the government client to define the scope of the representation (and hence the identity of the government client for conflict of interest purposes), the lawyer may defer to the government client's wishes only as long as she is able to fulfill her basic responsibilities to her other clients under Rule 1.7, including in particular her obligation not to take a position adverse to them on behalf of another client without their consent. This is the basic right secured to every client by Rule 1.7(b)(1).

The lawyer may not, by agreeing to a narrow definition of the government client, seek to defeat the reasonable expectation of her other clients, arising from and protected by Rule 1.7(b), that they will get a conflict-free representation from their lawyer. Accordingly, the volunteer lawyer must assure herself that the definition of the government client ultimately arrived at in discussions with authorized government officials both recognizes and respects her private clients' right to object when their lawyer proposes to represent interests directly adverse to their own. Her government client has the same right to object to any potentially conflicting private representations.

Thus, we believe that the lawyer who wishes to perform volunteer work for the Corporation Counsel's Office has an obligation to work with that office to develop a clear understanding of the scope of her representation of the City, and to make certain that the agreed upon definition of the government client is a reasonable one in light of all the facts and circumstances, including in particular each of her clients' right to know about, and to give or withhold consent to, her representation of adverse interests.

Ideally, the identity of the government client should be specifically agreed upon between the volunteer lawyer and the government officials who are authorized to speak for the client at the outset of the representation, and committed to writing. In those instances where the identity of the client is not clearly defined, it may be inferred from the reasonable understandings and expectations of the lawyer and those officials. These in turn may be gleaned from such functional considerations as the organizational structure of the City and the extent to which its constituent parts are related in form and function, and from the facts and circumstances of the particular matter at issue in the representation—including the general importance of the matter to the City as a whole and to other particular components whose programs or activities are not directly involved.

There may be situations in which it can be agreed at the outset that the volunteer lawyer will represent only a single City agency in a relatively discrete matter (e.g., a particular contract) or in a relatively discrete category of cases (e.g., child abuse and neglect cases). In such a case, the lawyer would be free to agree to take on a private representation in which she would be opposing another City agency on an unrelated matter, without having to notify or obtain the consent of either her existing government client or her new private client. That is the easiest case. Another fairly clear case is the one in which the volunteer lawyer represents a City agency in a matter that plainly

has City-wide impact or public importance, so that it can fairly be said to implicate the interests of the City generally. In such a case, it would be unreasonable not to regard the lawyer's client as the City as a whole, and she therefore could not undertake a private representation against any City agency without informing and obtaining the consent of the City and, subsequently, the private client. There are dozens of permutations on these basic scenarios, in which the general City-wide interest is sometimes clear and sometimes not so clear. However, the mere fact that a matter is captioned "X v. District of Columbia" is not dispositive of the identity of the government client. Rather, as noted previously, the answer depends upon the reasonable understanding reached between the volunteer lawyer and responsible public officials based upon all relevant facts and circumstances. Of course, as with all representations, the lawyer must be alert to the need to deal with any conflicts that may arise during the course of the representation.[7] (/bar-resources/legal-ethics/opinions/opinion268.cfm#footnote7)

The Corporation Counsel—as chief legal officer for the District and controller of its litigation—asserts that he has legal responsibility for determining the identity of the City government client for purposes of the conflict of interest rules. The Corporation Counsel has indicated his intention to issue guidelines for dealing with conflict issues posed by the volunteer program, that will address the identity of the client and the circumstances in which the District will waive any potential conflicts. We expect that these guidelines, when issued, will be useful to volunteer lawyers not only in determining what kinds of legal assistance they may give to the Corporation Counsel without creating a conflict with their existing private representations, but also in determining the scope of any conflicts. The guidelines may also be useful in determining what new private clients or matters a lawyer may subsequently take on in light of her responsibilities to her City government client(s).

In summary, we conclude that the Rules of Professional Conduct do not identify the City government client, and for the most part provide only general guidance for the lawyer and responsible government officials in reaching an understanding in this regard. The one clear limitation on the lawyer in this context derived from the ethics rules is her other clients' reasonable expectation that they will be allowed to object to their lawyer's representation of interests that would impinge upon her ability to zealously represent their own. Thus we believe that the private lawyer who wishes to perform volunteer work for the Corporation Counsel's office must work with that office to develop a clear understanding of the scope of her representation of the City, and hence the identity of the government client for conflicts purposes, and must take steps to protect all of her clients' right to know about and withhold consent to their lawyer's representation of interests that are adverse to their own.

B. Applicable Conflict of Interest Rules

Assuming that the relevant City government client has been identified, it remains to explain how the current conflict of interest rules apply in this situation.

1. Direct Conflicts Under Rule 1.7(b)(1)

As noted, Rule 1.7(b)(1) prohibits a lawyer from taking a position on behalf of one client that is directly adverse to a position taken by another client in the same matter (represented of course in this matter by another lawyer) without the consent of both clients. *See* note 4, *supra*. Thus, if a lawyer wishes to undertake a volunteer representation of a particular City agency that she or her firm is already opposing on behalf of a private client, the lawyer may do so only if she informs both the private client and the new City agency client of the "existence and nature of the possible conflict and the possible adverse consequences of such representation," and they give their consent.[8] (/bar-resources/legal-ethics/opinions/opinion268.cfm#footnote8) Rule 1.7(c)(1). The conflicts of each lawyer in a firm are imputed to all other lawyers in the firm. Rule 1.10.

For example, if a volunteer lawyer is considering taking on a matter for the Corporation Counsel that involves defense of a suit brought against the Mayor and/or the City Council, or a suit

attacking some City-wide program or regulation (so that the client must be deemed to be the City as a whole), the lawyer must make full disclosure to and seek consent from each of her firm's private clients who have matters pending against the City or any of its agencies. She must also inform the Corporation Counsel of any conflicting private representations being pursued by her or by other lawyers in her firm. Conversely, if a volunteer lawyer is working on a City-wide matter and is then asked to represent a private party against the City or one of its agencies, she must inform the Corporation Counsel and seek his consent. Consent must also be 8 obtained from the new client.

On the other hand, Rule 1.7(b)(1) does not apply, and client notification and consent are not required, if a lawyer is not opposing her own City government client but some other agency of the City that is not her client. For example, if a lawyer hired to defend a program or action of a particular City agency, such as the Housing Department, were representing only the Housing Department in this matter, she would be required to disclose the fact of her Housing Department representation and seek consent from those of her firm's private clients who had matters pending against the Housing Department or against the City as a whole.[9] (/bar-resources/legal-ethics/opinions/opinion268.cfm#footnote9) But she would not be required to disclose her Housing Department representation to private clients who had matters pending against other particular City agencies whose functions were unrelated to the Housing Department and that otherwise had no interest in the issues involved in the Housing Department representation and would be unaffected by its outcome.

Thus, in a case where a lawyer is representing the City as a whole, she is obliged to obtain the City's consent before opposing one of its constituent agencies, as well as the consent of any of her private clients who have interests adverse to the City (or, of course, the particular agency she would be representing). Similarly, if the lawyer is representing a private client against the City as a whole, she must obtain the private client's consent before undertaking any City government representation, even one involving a discrete agency program with no functional or programmatic relationship to the City-wide matter she is otherwise involved in. The only situation in which the lawyer may cabin her conflict and avoid having to conduct a broad canvass of all clients with City-related business is where both her public and her private representations involve discrete agency programs with no City-wide implications.

2. Indirect Conflicts Under Rule 1.7(b)(2)-(4)

Even if Rule 1.7(b)(1) does not apply because the lawyer's City government client is not considered to be the same City client that she is opposing, her representation of a City agency may still raise an "indirect" conflict of interest under subsections (2) through (4) of Rule 1.7(b) if it "interferes in some substantial way with the representation of another" client. D.C. Bar Opinion 265 (1996) ("Positional Conflicts"). This would as a practical matter result in the same need to determine that both clients could be adequately served, and then to make full disclosure to and obtain the consent of "each affected client" to the multiple representation. Under Subsections (2) and (3) of Rule 1.7(b), if the lawyer believes that her representation of the City agency "will be or is likely to be adversely affected" by her representation of a private client, or vice versa, the lawyer must obtain the consent of the affected client or clients. Under subsection (4), client consent must be obtained if the lawyer believes that the independence of her professional judgment on behalf of a client "will be or reasonably may be adversely affected" by her responsibilities to a third party or by her own personal interests.

In contrast to the situation involving a direct conflict under Rule 1.7(b)(1), where disclosure and informed consent are mandatory once it is apparent that the lawyer will be opposing her own client, a lawyer has some discretion in deciding whether an indirect conflict under Rule 1.7(b)(2)-(4) exists. Whether a particular volunteer representation will "adversely affect" the lawyer's representation of another client (or vice versa) depends upon the particular facts and circumstances and is in the first instance essentially a matter for the lawyer to decide. Likewise,

the existence of a conflict arising from the lawyer's responsibilities to third parties or her own personal interests is primarily a question of fact. The lawyer may decide that she should make disclosure to and seek consent from one client but need not do so from the other.

The "adverse effect" inquiry under subsections (2) through (4) is primarily a functional one, generally involving both the relative importance of the representation to the respective clients or to their lawyers and the directness of the adverseness between them. It may require inquiry into the nature of the issues, the amount of money at stake, and the likelihood that either client would otherwise be substantially and foreseeably affected by the outcome of the other's matter. Sometimes, the "adverse effect" inquiry will also involve the particular role the volunteer lawyer is expected to play in the matter, and the "intensity and duration" of her relationship with the lawyers she is opposing. *Cf.* Formal Opinion 1996-3 of the Committee on Professional and Judicial Ethics of The Association of the Bar of the City of New York (1996)(conflicts of interest where one lawyer represents another lawyer).

Without attempting to exhaust the kinds of situations that would give rise to an adverse effect under Rule 1.7(b)(2)-(4), we offer the following examples to illustrate the kinds of circumstances that in this Committee's view could require a lawyer to obtain consent from one or both clients under these provisions. 1) A volunteer lawyer whose firm is handling a matter for private clients against one City agency, and who is subsequently asked by the Corporation Counsel to defend another City agency in a matter whose outcome will have a substantial and foreseeable impact on the outcome of the firm's private clients' matter, may be required to obtain one or both clients' consent. 2) A volunteer lawyer who represents one City agency and wishes to make certain arguments about that agency's authority that are inconsistent with arguments she is making on behalf of a private client against another City agency in an unrelated matter, may be required to obtain consent from one or both clients if the success of her arguments on behalf of one client "will, in some foreseeable and ascertainable sense, adversely effect the lawyer's effectiveness on behalf of the other" client. *See* Opinion 265, *supra*. 3) A volunteer lawyer performing work for one City agency who wishes to take a leading role representing a private party in a controversial matter involving another City agency should anticipate having to obtain consent from both clients if she believes it likely that one representation will have an adverse effect on the independence of her professional judgment or her credibility in the other. 4) A volunteer lawyer who works closely and for extended periods of time with full-time Corporation Counsel lawyers, or is closely supervised by Corporation Counsel lawyers, may find it difficult to exercise independent professional judgment in opposing the same lawyers with whom she is working or who are supervising her, and in such a situation she may decide that she should not accept a private representation in which she would be opposing her colleagues, without notifying and seeking the consent of both the Corporation Counsel and her private client.[10] (/bar-resources/legal-ethics/opinions/opinion268.cfm#footnote10)

The above examples are not intended to be exhaustive, but merely to suggest the possibilities for "indirect" conflicts to develop in the context of a volunteer program such as the one described in Opinion 92.

Conclusion

The conclusion of Opinion 92 that, under the former Code of Professional Responsibility, a lawyer may never oppose a City agency that she is also representing on behalf of another client in an unrelated matter, is no longer mandated by the Rules of Professional Conduct. Under Rule 1.7(b)(1), a lawyer may oppose her own City government client on behalf of a private client in an unrelated matter as long as she makes clear the nature of the conflict to both clients and obtains their consent.

Moreover, we believe that in certain limited situations a lawyer may represent a City agency without having to notify or obtain the consent of private clients that she is representing against

other discrete City agencies. Opinion 92's apparent assumption that the client of the Corporation Counsel lawyer is always and necessarily the City as a whole is incorrect, and in any event has no foundation in the ethics rules. The rules contemplate that the identity of the City government client for conflict of interest purposes will be decided on a case-by-case basis between the lawyer and responsible government officials, taking into account the reasonable expectation of the lawyer's other clients that they will receive a conflict-free representation. Their decision will generally be based on functional considerations derived from the structure and relationship of the government entities involved and from the facts and circumstances of the particular matter at issue in the representation. Even if the lawyer would not be opposing her own client, she may be required by Rule 1.7(b)(2)-(4) to obtain client consent if her representation of one client would interfere in some substantial way with her representation of the other, or if the independence of her judgment in either client's behalf would be compromised by her responsibilities to or interests in a third party or by her own personal interests, including her personal and professional relationships with the lawyers on the other side.

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1. Under the program described in Opinion 92, private law firms were encouraged to donate the services of attorneys to assist the Corporation Counsel in a variety of legal matters, generally on a part-time basis. This program reportedly yielded little by way of relief for the Corporation Counsel's Office, at least in part because of the conditions on lawyer participation (particularly the requirement of obtaining waivers from other clients) set forth in Opinion 92. In 1992, a second and more formal effort was made to encourage lawyers from private firms to volunteer their services to the City, this time by granting them a special dispensation from the imputation rule. The amendments enacted in that year to Rule 1.10 and 1.11 provided that conflicts resulting from one lawyer's voluntary service to the Corporation Counsel need not be imputed to all other lawyers in her firm. See Rule 1.10(e) and Comment [19]; Rule 1.11(h) and Comments [12] and [13]. (The 1992 amendments to Rules 1.10 and 1.11 were made permanent in 1994 and extended to the D.C. Financial Control Board in 1996). According to the commentary to Rule 1.10, this special dispensation from the imputation rule depends upon the volunteer lawyer's working full-time for the Corporation Counsel (there must be a "temporary cessation" of a volunteer lawyer's practice with the firm, "so that during that period the lawyer's activities which involve the practice of law are devoted fully to assisting the Office of the Corporation Counsel"). Thus, when a private lawyer is detailed full-time to the Corporation Counsel's Office under the so-called "Rule 1.10 program," her firm will not be regarded as representing the City, and will not need to alert and obtain consent from those of its clients who "might reasonably consider the representation of its interests to be adversely affected" by the firm's representation of the City. See Comment [7] to Rule 1.7. (It follows by necessary implication that where a lawyer is volunteering for the City on a less than full-time basis, or does not otherwise meet the requirements of a "Rule 1.10 detail," the conflicts resulting from her government service are imputed to all lawyers in her firm." We understand that the Rule 1.10 program has attracted few volunteers, and has accordingly provided no more benefit for the Corporation Counsel's Office than did the pre-1992 part-time details discussed in Opinion 92.

2. Amendments to the Rules issued by the D.C. Court of Appeals on October 16, 1996, make a number of revisions to the text and commentary of Rule 1.7, none of which affect the conclusions of this opinion. We would note, however, the extensive attention paid in new Comments [13]-[18] to conflicts of interest where the client is a "corporation, partnership, trade organization or other organization-type client." While not directly applicable to situations in which the client is a governmental entity, cf. Comment [7] to Rule 1.13, we believe this discussion may provide a useful supplement to the discussion of conflicts under Rule 1.7(b)(2)-(4) in Part II B(2), infra.

3. Opinion 92 does not say in so many words that the client of the volunteer lawyer is always and necessarily the entire City for Canon 5 conflict of interest purposes. Nevertheless, this has been the generally accepted interpretation of the opinion since its issuance more than 16 years ago, and there appears to be little support in the text for a contrary position. Moreover, the fact that the absolute bar under the "appearance" standard of Canon 9 is clearly applicable only to representations involving particular City agencies if further evidence that the drafters of Opinion 92 intended a very broad definition of the City client for conflict of interest purposes.

4. Where a conflict arises under Rule 1.7(b)(1) because the lawyer is opposing her own client on behalf of another client, both clients are presumed to be "potentially affected" under Rule 1.7(c)(1) and both must therefore consent to the representation after full disclosure.

5. Opinion 92 advises a firm wishing to participate in the Corporation Counsel's volunteer program to "send a standardized letter to all clients identified as having present or potential future dealings with the City, describing the program and explaining in general how the judgment of the firm's attorneys might or might not be affected by the firm's participation in the program." This suggests an even broader application for the condition, requiring the lawyer to obtain consent from clients with present or potential City business without regard to whether the lawyer or her firm is actually representing the client in connection with that City business. We see no basis in the current rules for such an expansive reading of the conflict of interest rules. Even in a case when the entire City is considered the lawyer's client, consent must be obtained only from clients who the lawyer is currently representing against the City (or one of its agencies) or those who have actually asked her so to represent them.

6. We do not regard the definition of the government client contained in Rule 1.6(i) ("the client of the government lawyer is the agency that employs the lawyer") as dispositive for conflict of interest purposes. And, there is no indication that this or any other a priori definition of the government client was intended to apply in this context in the otherwise thorough consideration of the "government lawyer" issue by the Sims Committee in 1988. See Report by the District of Columbia Bar Special Committee on Government Lawyers and the Model Rules of Professional Conduct (1989).

7.The provisions of Rule 1.7(d) (1996 amendment) govern conflicts arising after the representation commences that are "not reasonably foreseeable at the outset of a representation." As we read this provision, it subjects such unforeseeable late-arising conflicts to the provisions of Rule 1.7(b)(2) through (4) only, and not to those of Rule 1.7(b)(1).

8. The government client can generally decide what information it needs or wants about the volunteer lawyer's potentially conflicting representations, in the context of deciding its own identity. Thus, the process of self-definition functions for the government client as a way of consenting to the volunteer lawyer's conflicting private representations to which it would be entitled to object if it chose to define its identity more broadly. In this fashion, the government client may decide that it has no interest in knowing about any conflicts that might otherwise be imputed to the volunteer lawyer under Rule 1.10 by virtue of representations by other lawyers in her firm.

9. Given the decision-making structure of government entities, we believe that the conflicts of the City are necessarily attributed to its constituent parts, and that the conflicts of the constituent parts of the City are necessarily attributed to the City as a whole—though the conflicts of one of the City's constituent agencies may or may not be attributed to other City agencies.

10. Because this conflict is in the nature of a personal conflict, as opposed to one derived from the lawyer's representation of another client, we doubt that it would be imputed to other lawyers in the firm. See ABA Formal Opinion 96-400 ("Job Negotiations with Adverse Firm or Party") (Rule 1.10 "cannot be construed so broadly as to require that all lawyers in a firm be presumed to share their colleague's personal interest in joining the opposing firm in a matter," though each lawyer must

individually evaluate whether his "'responsibilities to . . . a third person'—i.e., his colleague—or his own interest in his colleague's interest, may materially limit the representation.")